(1) Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

October Term, 1998

ROBERT and BARBARA TENNISON, et al.,

Petitioners,

v.

NORMA PAULUS, et al.,

Respondents.

On Petition For A Writ of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, in a facial challenge to the constitutionality of a state statute, the court may refuse to consider the administrative construction and implementation of the statute simply because the construction expands the reach of the statute rather than narrowing it, contrary to this Court's holding in *Forsyth County, Georgia v. The Nationalist Movement*, 505 U.S. 123 (1992)?

2. Whether parents, and students in public schools who are compelled by law to attend, have standing to challenge the constitutionality of an Act as applied, where they assert that the Act restructures the school system in a manner that requires both students and parents to adopt and affirm state-decreed attitudes, beliefs and opinions?

LIST OF PARTIES*

BEAVERTON SCHOOL DISTRICT NO. 48

SHERRE CALOURI

CURTIS DEATHERAGE

TERESA DEATHERAGE

VELVET DEATHERAGE

ANITA DECKER

JOSHUA DOWNEY

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SUE DOWNEY

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MARY KOEPFLE

SUSAN MASSEY

TOM McCLINTOCK

CHUCK MEYERS

OREGON STATE BOARD OF EDUCATION

KRISTA D. PARENT

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*There is no parent or subsidiary company to be listed.

LIST OF PARTIES – Continued

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JOHN PETRICK

CAROL QUACKENBUSH

LESLIE RUBINSTEIN

RICK SETTELMEYER

ROBERT SHOOK

BOB SISK

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ROBERT TENNISON

TYREL TENNISON

FELIPE VELOZ

JOHN WILKINS

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The undersigned counsel of record, on behalf of all Petitioners, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in the above-entitled proceeding.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 144 F.3d 1285 (9th Cir. 1998), and is reprinted in the Appendix hereto, App. 1-9. The Findings and Recommendation of the Magistrate Judge of the United States District Court for the District of Oregon is reprinted at App. 10-32. The order of the United States District Court for the District of Oregon adopting the findings and recommendation of the Magistrate Judge is reprinted at App. 33-34. The Judgment entered on the District Court's Order is reprinted at App. 35. The Order denying Plaintiffs' petition for rehearing is reprinted at App. 36-38. The Judgment entered by the Ninth Circuit is reprinted at App. 39-40.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on June 9, 1998. The Court of Appeals denied a timely petition for rehearing on August 3, 1998.

App. 36-38. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Oregon Educational Act for the 21st Century, Or. Rev. Stat. §§ 329.005 et seq. (1991), as amended. A copy of the Act is reprinted at App. 41-167.

I.

STATEMENT OF THE CASE

A. Course Of The Proceedings.

Plaintiffs are children in the public schools of Oregon and their parents.[1]

They challenged the constitutionality of the Oregon Educational Act for the 21st Century ("OEA-21" or "the Act"), Or. Rev. Stat. §§ 329.005 et seq. (1991), as amended, both on its face and as applied. Prior to Plaintiffs' completion of discovery, all Defendants moved for summary judgment. The district court, in a two page summary opinion, adopted the Magistrate Judge's recommended ruling awarding summary judgment for Defendants. App. 33-34. The lower court analyzed the case as a pre-enforcement facial challenge, refusing to consider the

[1] Plaintiffs also include students who had been in the Oregon public schools but were removed because of the invasive and compulsory nature of the restructured system, and their parents. *See* First Amended Complaint ("Complaint") at ¶¶ 8, 9, 119, 120, and 127.

manner in which Defendant educators administer the Act. For example, the court stated that Plaintiffs' arguments were "[w]ithout a factual context," and that Plaintiffs were "ringing hypothetical alarms in response to abstract language." App. 21.

Plaintiffs timely appealed. The Ninth Circuit Court of Appeals upheld the lower court's award of summary judgment on the first amendment claims and found the parents without standing to assert their claims of infringement on their liberty interests, and the students without standing to assert an as applied claim, because "plaintiffs allege no constitutional violation from any specific application of the Act." App. 6. Plaintiffs sought rehearing or rehearing on banc, which was denied. App. 38. This petition for certiorari followed.

B. Statement Of The Facts.

The OEA-21 was passed into law by the Oregon General Assembly in 1991. It calls for the complete restructuring of the educational system at all levels throughout the state. Under the new system, all students are required to meet "outcomes," the essence of which are set by the state. *See* App. 54-55 ("The Legislative Assembly declares that . . . [a] restructured educational system is necessary to achieve the state's goals of the best educated citizens in the nation and in the world."); *see also* App. 94; RE 178, 217 ("With the setting of outcomes at all levels and in all disciplines districtwide, all students must meet those outcomes"). As Superintendent Yvonne Katz put it, "[f]ailure [to adopt the State orthodoxy of belief] is not an option." RE 194. If a child does not

perform[2] to the state's satisfaction the first time, he or she is "remediated" (given special instruction), reassessed, remediated again, reassessed, etc., until the child "masters" the outcome.

The outcomes include attitudes, beliefs and opinions. *E.g.*, RE 161, 162 (Beaverton School District Guidance and Counseling outcomes: "All students will perceive themselves as competent learners who are able to accept challenges," and "All students will express feelings in appropriate ways"). Even a student who expresses a contrary opinion to the government-selected outlook on a playground, at recess, is forced to undergo "remediation" in order to change his viewpoint. RE 216.

The Act also authorizes and encourages State intervention into the home without any proof of family breakdown or criminal action, including early comprehensive childhood education before the child is even enrolled in school. This intervention into the home is designed to subordinate the interests of the parent to the interests of the State. *See* App. 69; RE 180 ("The integration of social services is a key element of the Oregon Statewide school improvement plan."); RE 230 (school in Defendant South Lane's district collecting information "on how much time kindergarten, first and second grade students spent

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[2] Students are no longer allowed to simply recite answers to test questions, but must *perform* in order to satisfy state requirements. *E.g.*, RE 137, 178. They must act out the performance standards to the state's satisfaction. This is why the outcomes are defined in terms of activities: "All students will apply a global perspective to their lives," for instance. *See* Complaint at ¶ 122.

watching television on school nights"). By way of example, the State of Oregon encourages local districts to compel parents to execute a "parent compact," whereby they promise to perform certain duties at home. These duties are assigned parents by the government. RE 185 (checklist furnished by State Department of Education for items to be in School Improvement Plans: [make sure] " – a parent compact is included in the plan"); RE 213 (actual "Student-Parent-Teacher-Administrator Compact" used in South Lane School District, whereby parent must affirm that he or she is responsible for "[e]ncouraging positive attitudes about school," "[s]upporting the school," and "[m]onitoring the amount and content of my child's television viewing," among other things).

Plaintiff students have been forced to receive their education under these conditions. Students have been compelled to answer questions about their most deeply held beliefs. For example, in a "Value Appraisal Survey" administered at Cottage Grove High School, where Plaintiffs Jay and Tyrel Tennison attended, students were asked to rate statements as "definitely true," "mostly true," "undecided," "mostly false," or "definitely false." Statements included the following: "I would rather spend an evening at home with my family than out with friends;" "I have a special appreciation for beautiful things;" "I believe in a God who answers prayers;" "I love my parents;" and "I would welcome a person of another race as a neighbor." Complaint at ¶ 102. This survey and others like it were then used to ensure that students' beliefs conformed with the state-decreed orthodoxy. *Id.*

Some of the Plaintiff parents have been compelled by conscience to remove their children from the public schools due to the invasive and compulsory nature of the restructured system. *See* Complaint at ¶¶ 8, 9, 119, 120, and 127.

II.

REASONS FOR GRANTING THE WRIT

A. The Lower Court Erred by Refusing to Consider the Construction and Application of the Act by the Agencies Charged with its Enforcement.

In upholding the facial validity of the Act, the Ninth Circuit refused to consider the administrative construction and application of the Act employed by both the Oregon Department of Education and the local school districts, bodies charged with enforcement of the Act. Purporting to rely on this Court's opinion in *Forsyth County, Georgia v. Nationalist Movement*, 505 U.S. 123 (1992), the Ninth Circuit held that consideration of the implementation of a statute is proper only where the practice operates to narrow the construction of an Act. According to the Ninth Circuit, such facts therefore have no place where, as here, the implementation of the Act broadens its reach. App. 6-7. The Ninth Circuit defended its refusal on grounds that the courts "must interpret statutes to avoid constitutional conflicts when we can." App. 7.

This holding is contrary both to this Court's holding in *Forsyth County* and to sound policy.

1. *Forsyth County* requires that the administrative construction and application be considered.

The long-standing rule of statutory construction in a constitutional challenge is that where an administrative agency charged with enforcing a statute has interpreted it, that construction should be considered and analyzed by the court, even in a facial challenge. *Forsyth County*, 505 U.S. at 131; *Ward v. Rock Against Racism*, 491 U.S. 781, 795-96 (1989) ("[a]dministrative interpretation and implementation of a regulation is, of course, highly relevant to our analysis, for '[i]n evaluating a facial challenge to a state law, a federal court must . . . consider any limiting construction that a state court or enforcement agency has proffered.' " (*quoting Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5 (1982)); *Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 770 n.11 (1988) (the rule of construction requiring a court to read a statute in light of the limits imposed by those enforcing it "applies even if the face of the statute might not otherwise suggest the limits imposed"); *Broadrick v. Oklahoma*, 413 U.S. 601, 617 n.16 (1973) ("a federal court must determine what a . . . statute means before it can judge its facial constitutionality"); *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 566 (1980) ("The Court has often repeated the general proposition that considerable respect is due 'the interpretation given [a] statute by the officers or agency charged with its administration.' " (*quoting Zenith Radio Corp. v. United States*, 437 U.S. 443, 450 (1978)).

Forsyth County involved a facial challenge to a county ordinance regulating parades and assemblies on public

property. The ordinance was asserted by plaintiff to have vested unbridled discretion in the hands of the county administrator, and allowed him to assess a content-based permit fee. 505 U.S. at 130. The county contended that the ordinance could not be unconstitutionally content-based, because its language was nearly identical to the ordinance upheld by this Court in *Cox v. New Hampshire*, 312 U.S. 569 (1941). 505 U.S. at 136. The *Forsyth County* Court disagreed.

> In evaluating petitioner's facial challenge, we must consider the county's authoritative constructions of the ordinance, including its own implementation and interpretation of it. In the present litigation, the county has made it clear how it interprets and implements the ordinance. The ordinance can apply to any activity on public property – from parades, to street corner speeches, to bike races – and the fee assessed may reflect the county's police and administrative costs. Whether or not the fee would include any or all of the county's administrative and security expenses is decided by the county administrator.

Id. at 131 (citations and footnotes omitted); *see also id.* at 132-33 ("Based on the county's implementation and construction of the ordinance, it simply cannot be said that there are any narrowly drawn, reasonable and definite standards guiding the hand of the Forsyth County administrator.") (internal citations and quotations omitted). It was not the abstract language of the ordinance that rendered it facially unconstitutional, but the county's interpretation and administration of it. *Accord, Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (striking state statute as

facially unconstitutional based on construction by state courts).

2. Public policy would be thwarted under the Ninth Circuit's ruling.

The Ninth Circuit's opinion is not only contrary to well-settled precedent, it is also contrary to public policy. The policy interest served by consideration of the actual implementation of a state statute is obvious: "[A] federal court must determine what a state statute means before it can judge its facial constitutionality." *Broadrick v. Oklahoma*, 413 U.S. 601, 618, n.16 (1973) (O'Connor, J., concurring); *see also Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 509 (1985). The interpretation and implementation of a statute by the agency charged with its enforcement inform the meaning of the statute, putting meat on the otherwise dry bones of the Act.

Moreover, failure to consider the interpretation and implementation of a statute by the agency charged with its enforcement, whether such construction narrows the reach of the statute or expands it, locks the court in its ivory tower, far removed from the realities of life. In essence, it renders the court's opinion meaningless. An agency that has settled its own interpretation of an Act contrary to constitutional strictures is only emboldened to increase its unconstitutional agenda, having received the stamp of approval by the court's upholding of the Act's constitutionality.

According to the logic of the Ninth Circuit, administrative bodies (such as the Oregon Department of Education) that construe and implement an Act in a manner

prohibited by the constitution are protected against any reference to such construction and implementation, unless and until a specific plaintiff has incurred harm sufficient to allow him to lodge an as applied challenge to the Act. Such a rule of construction operates to subject the people to irreparable harm to their constitutional rights. *Cf. Columbus Board of Education v. Penick*, 443 U.S. 449, 457 n.5 (1979) ("the discriminatory application of an ordinance fair on its face . . . [is] unconstitutional state action.") (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)).

In *Columbus Board of Education v. Penick*, this Court considered a situation where segregation was rampant, although there was no statute affirmatively mandating the practice. The Court had no trouble ruling the practice unconstitutional, despite a vigorous dissent pointing to the need for a statute.

> [I]n the educational context there is no magical difference between segregated schools mandated by statute and those that result from local segregative acts and policies. The presence of a statute or ordinance commanding separation of the races would ease the plaintiff's problems of proof, but here the District Court found that the local officials, by their conduct and policies, had maintained a dual school system in violation of the Fourteenth Amendment. The Court of Appeals agreed, and *we fail to see why there should be a lesser constitutional duty to eliminate that system than there would have been had the system been ordained by law.*

443 U.S. at 457 n.5 (emphasis added). By the same token, the lawless actions of the Oregon Department of Education and its agents should be declared unconstitutional,

with or without the shroud of legitimacy occasioned by an empty and ambiguous statute.[3]

The chill upon the parents and students all over the State of Oregon is palpable.

B. The Injury to Plaintiffs' Constitutional Rights is Both Actual and Immediate, Thereby Conferring Standing to Sue.

The Ninth Circuit ruled that Plaintiffs' constitutional rights had not been violated. App. 5. It therefore found they had no article III standing to assert an as applied challenge to the Act. *Id.* This conclusion was erroneous.

Plaintiffs' first claim is that the Act violates their freedom of the mind, both of the students and of the parents.[4] This overarching first amendment right finds support not only in the free speech, free press and free

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[3] The unconstitutionality of the practice is hardly open to question. A system of education whereby a child is coerced to believe only what the state decrees, whether in matters of religion, politics or otherwise, is abhorrent to our constitution. *See West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.").

[4] The Ninth Circuit erroneously characterized Plaintiff parents' claims as arising solely under the substantive due process clause of the fourteenth amendment. App. 4. In fact, however, Plaintiff parents assert injury to their first amendment rights as well. *See* Complaint at ¶¶ 3, 5, 43, 44, 77, 82, 140, 146-148.

exercise components of the first amendment, but also in the establishment clause. *See, e.g., Lee v. Weisman*, 505 U.S. 577, 592 (1992) ("A state-created orthodoxy puts at grave risk that freedom of belief and conscience which are the sole assurance that religious faith is real, not imposed."); *Riley v. National Federation of Blind*, 487 U.S. 781, 797 (1988) (noting that freedom of the mind encompassed both free press and free speech components); *Marsh v. Chambers*, 463 U.S. 783, 803 (1983) ("The principles of 'separation' and 'neutrality' implicit in the Establishment Clause serve many purposes. . . . The first, which is most closely related to the more general conceptions of liberty found in the remainder of the First Amendment, is to guarantee the individual right to conscience. . . . The right to conscience, in the religious sphere, is not only implicated when the government engages in direct or indirect coercion. It is also implicated when the government requires individuals to support the practices of a faith with which they do not agree.") (footnote omitted); *Baird v. State Bar of Arizona*, 401 U.S. 1, 5 (1971) ("And we have made it clear that: 'This conjunction of liberties is not peculiar to religious activity and institution alone. The First Amendment gives freedom of mind the same security as freedom of conscience.'" (*quoting Thomas v. Collins*, 323 U.S. 516, 531 (1945)).

The right to freedom of the mind and conscience is a particularly delicate one, deserving of special protections. As Representative Carroll explained during congressional debate over the Establishment Clause: "[T]he rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand." 1 Annals of Cong. 757 (1789); *see also Abington School Dist.*

v. Schempp, 374 U.S. 203, 225 (1963) ("The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, 'it is proper to take alarm at the first experiment on our liberties.' " (*quoting Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 65 (1947) (*quoting* II *Writings of James Madison* 183, MEMORIAL AND REMONSTRANCE AGAINST RELIGIOUS ASSESSMENTS (1785))). Most recently, this Court has reiterated that "there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools." *Lee v. Weisman*, 505 U.S. at 592; *see also Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) ("Students in such institutions are impressionable and their attendance is involuntary. The State exerts great authority and coercive power through mandatory attendance requirements, and because of . . . the children's susceptibility to peer pressure.") (citations omitted).

Standing to raise a challenge to government action that intrudes upon the freedom of the mind is conferred where, as here, Plaintiffs are subjected to those practices. That fact alone renders the constitutional injury both actual and immediate. They need not adduce evidence of emotional trauma, nor undergo formal counseling. In the sensitive realm of matters of conscience and thought, especially among impressionable public school students,[5] those directly affected by the offending practice have

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[5] Plaintiffs include a twelve year old (see Complaint at ¶ 9), and the Act imposes its edicts upon children as young as prekindergartners. *See* App. 55 (policy on early childhood education).

standing to challenge it. *See Lee v. Weisman*, 505 U.S. at 584 (finding standing to raise free exercise and establishment clause claims challenging voluntary prayer at graduation ceremony even though students were not required to attend); *Abington School District v. Schempp*, 374 U.S. 203, 224 n.9 (1963) ("school children and their parents, . . . are directly affected by the laws and practices against which their complaints are directed. These interests surely suffice to give the parties standing to complain."); *Valley Forge College v. Americans United*, 454 U.S. 464, 490 (1982) (describing *Schempp* and observing that "impressionable schoolchildren . . . subjected to unwelcome religious exercises or . . . forced to assume special burdens to avoid them" have standing to challenge practice); *Data Processing Service v. Camp*, 397 U.S. 150, 154 (1970) ("A person or a family may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause."); *Flast v. Cohen*, 392 U.S. 83, 102 (1968) (noting that standing requirements differ between establishment clause challenges and free exercise challenges, and finding taxpayer standing to challenge alleged establishment clause violation).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

144 F.3d 1285 (9th Cir. 1998)

ROBERT TENNISON; BARBARA TENNISON, on behalf of themselves and as next friends for their minor child Tyrel Tennison; CURTIS DEATHERAGE; TERESA DEATHERAGE, on behalf of themselves and as next friends for their minor child Velvet; FREDERICK SLOANE; LINDA SLOANE, on behalf of themselves and as next friends for their minor children Elizabeth Sloane and Sabrina Sloane; SUE DOWNEY, on behalf of herself and as next friend for her minor children Joshua Downey and Shannon Downey,

Plaintiffs-Appellants,

v.

NORMA PAULUS; Superintendent of Public Instruction for the State of Oregon; OREGON STATE BOARD OF EDUCATION; SUSAN MASSEY, TOM MCCLINTON, JEANA WOOLLEY, JUDITH STIEGLER, ANITA DECKER, FELIPE VELOZ, in their official capacities as members of the State Board of Education; SOUTH LANE SCHOOL DISTRICT 45J3;

No. 97-35466
D.C. No.
CV-96-06232-TC
OPINION

BOB SISK, IN HIS OFFICIAL CAPACITY AS SUPERINTENDENT AND BUDGET DIRECTOR OF SOUTH LANE SCHOOL DISTRICT; KRISTA D. PARENT, in her official capacity as Assistant Superintendent and Curriculum Director of South Lane School District; SHERRY HIGGINS, RICK SETTELMEYER, LESLIE RUBINSTEIN, MARY KOEPFLE, CAROL QUACKENBUSH, JOHN PETRICK, in their official capacities as members of the South Lane School Board; BEAVERTON SCHOOL DISTRICT NO. 48; YVONNE KATZ, in her official capacity as Superintendent of Beaverton School District; JUDY TACCONGA, in her official capacity as Executive Administrator for Restructuring Support Services for the Beaverton School District; CHUCK MEYERS, SHERRE CALOURI, JOHN WILKINS, DAVID GEIGER, ROBERT SHOOK, in their official capacities as members of the Beaverton School Board,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, Chief District Judge, Presiding

Argued and Submitted
May 4, 1998 – Portland, Oregon

Filed June 9, 1998

Before: Otto R. Skopil, Jr., Michael Daly Hawkins, and Sidney R. Thomas, Circuit Judges.

Opinion by Judge Skopil

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David Schuman, Deputy Attorney General, Salem, Oregon; Joel DeVore, Luvaas, Cobb, Richards & Fraser, P.C., Eugene, Oregon; and James N. Westwood, Miller Nash, Wiener, Hager & Carlsen, LLP, Portland, Oregon, for the defendants-appellees.

OPINION

SKOPIL, Senior Circuit Judge:

Plaintiffs, Oregon public school students and their parents, challenge the constitutionality of the Oregon Educational Act for the 21st Century, Or.Rev.Stat. §§ 329.005-329.975, alleging that the Act violates the First and Fourteenth Amendments. The district court granted summary judgment to the state defendants. We affirm that decision on the First Amendment claim; we vacate the disposition of the Fourteenth Amendment claim because the district court lacked subject matter jurisdiction.

I.

The Oregon Legislature passed the Oregon Educational Act for the 21st Century in 1991 and amended it in 1995. *See* 1995 Or. Laws 660. The Act restructures the public school system in Oregon by imposing a "rigorous academic program," Or.Rev.Stat. § 329.015(2)(a); implementing periodic assessments of students' progress in the form of "Certificates of Mastery," *see id.* §§ 329.035(4)(b), 329.445-.489; developing "alternative learning environments," *see id.* §§ 329.035(4)(c), 329.485(4)-(5), 329.860; establishing "early childhood programs," *see id.* §§ 329.035(4)(d), 329.160-.245; and emphasizing "work-related learning experiences," *see id.* §§ 329.035(4)(e), 329.447(4), 329.475, 329.855. Part of the Act's philosophy is that students should be expected to succeed. *See, e.g., id.* § 329.025(2) (specifying that school system should "[a]ssume[ ] that all students can learn."); *id.* § 329.035(1) ("The State of Oregon believes that all students can learn and should be held to rigorous academic content standards and expected to succeed.").

Plaintiffs contend that the Act impermissibly encroaches upon students' "freedom of the mind" and imposes viewpoint discrimination, both in violation of the First Amendment. They also argue that the Act infringes upon their rights as parents to rear their children free of governmental interference, a right of substantive due process guaranteed by the Fourteenth Amendment. *See Nunez v. City of San Diego*, 114 F.3d 935, 951-52 (9th Cir.1997). Although plaintiffs purport to challenge the Act on its face and as applied, they fail to provide a single example of how the Act has been applied

to violate any constitutional rights of any specific individual. Their "evidence" of unconstitutional application consists of hypothetical explanations of how the Act might be implemented or interpreted. No concrete constitutional violation is alleged. This prompts us to determine, as a threshold matter, whether plaintiffs had standing to sue and thus whether the district court had jurisdiction. *See Steel Co. v. Citizens for a Better Env't*, 118 S. Ct. 1003, 1012 (1998).

II.

To satisfy the Article III case or controversy requirement, plaintiffs must demonstrate their standing to sue, which includes a showing of actual injury to their legally protected rights. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *San Diego County Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996). A plaintiff whose constitutional rights have not been violated may nevertheless bring a facial challenge to a law that implicates the First Amendment. *See Nunez*, 114 F.3d at 949; *Ripplinger v. Collins*, 868 F.2d 1043, 1047 (9th Cir. 1989). This exception applies when a law has "a close enough nexus to expression" to threaten or chill free speech. *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 759 (1988). The Oregon Educational Act is such a law; thus, we have – as did the district court – jurisdiction to entertain plaintiffs' facial First Amendment challenge. *See Nunez*, 114 F.3d at 950-51 (allowing a facial challenge to a curfew ordinance because it had "an integral effect on the ability of minors to express themselves").

Plaintiffs' Fourteenth Amendment claim that their parental rights have been infringed by the Act is another matter, however. The overbreadth exception to traditional standing requirements operates only in the First Amendment context. *See id.* at 949 n. 11; *Roulette v. City of Seattle*, 97 F.3d 300, 306 (9th Cir. 1996). Because plaintiffs allege no constitutional violation from any specific application of the Act, we conclude that they do not have standing to pursue this claim and the district court had no jurisdiction to consider its merits. Accordingly, we vacate that portion of the trial court's decision pertaining to plaintiffs' Fourteenth Amendment claim.

III.

Plaintiffs premise their First Amendment challenge on the view that the Oregon Educational Act operates as a state mechanism for controlling the minds and speech of public school students. They raise three distinct arguments in support of their position; none persuades us that the Act violates the Constitution.

A.

Citing *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992), plaintiffs argue that, even if the statute is facially constitutional in the abstract, the court should consider school officials' implementation of the Act to determine whether that implementation has broadened its reach, rendering it facially unconstitutional. This argument is without merit. The Supreme Court in *Forsyth County* applied the principle that a narrowing construction of an impermissibly overbroad statute can save it

from unconstitutionality. *See* 505 U.S. at 131; *see also Ward v. Rock Against Racism*, 491 U.S. 781, 795-96 (1989). The Court evaluated the bare language of the challenged statute, *see* 505 U.S. at 131, then considered whether it had been narrowly construed by "the county's established practice," *id.* at 133. The Court concluded not that established practice had *broadened* the reach of the law, but rather that practice had done nothing to narrow it. *See id.*

Plaintiffs' contrary reading of *Forsyth County* ignores a well established judicial mandate – we must interpret statutes to avoid constitutional conflicts when we can. *See Tucker v. California Dep't of Educ.*, 97 F.3d 1204, 1217 (9th Cir. 1996) ("[W]e attempt to interpret state enactments to avoid constitutional problems. . . . "). An as-applied challenge, not a facial challenge, is the proper vehicle to address any unconstitutional implementation of the Act. *See Foti v. City of Menlo Park*, No. 97-16061, slip. op. at 4158-59 (9th Cir. May 1, 1998) (distinguishing between facial and as-applied challenges).

B.

Plaintiffs next contend that the Act violates the "freedom of the mind" protected by the First Amendment. Specifically, citing *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), they point to the "coercive nature" of the new system, claiming that the Act requires educators to force children to "change their attitudes, beliefs and opinions to conform to state-approved viewpoints." They compare the mandatory flag salute in *Barnette*, which the Supreme Court characterized as "a compulsion of students to declare a belief," 319 U.S. at

631, to the mandatory attainment of "outcomes," which plaintiffs claim is now required in Oregon public schools. The students in Barnette who refused to comply, however, faced explusion, and their parents were subject to criminal prosecution. *Id.* at 629. Oregon public school students and parents are vulnerable to no such sanctions. Nothing in the Act suggests that the new educational system is based on compulsion rather than the sort of teaching "by persuasion and example" specifically distinguished and approved in *Barnette*. *Id.* at 640, *see also Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) ("[E]ducators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."); *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 683 (1986) ("The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board."). The Constitution does not prohibit a state from imposing an educational structure and philosophy on its public schools. The Oregon Educational Act does nothing more.

C.

Finally, plaintiffs argue that the Act imposes viewpoint discrimination, in violation of the First Amendment, because it somehow "confines students to the expression of those sentiments that are officially approved." They quote extensively from Supreme Court precedent establishing that, outside the public school setting, laws may not discriminate against speech based on its content. Even if the Act imposed such discrimination,

which is far from obvious, educators nevertheless have discretion in many situations to decide what speech is permitted of students. As the Supreme Court has instructed, "[i]t does not follow . . . that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school. . . . [T]he constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings." *Bethel Sch. Dist. v. Fraser*, 478 U.S. at 682.

IV.

We conclude that the district court correctly rejected plaintiffs' First Amendment facial challenge. If Oregon public school officials apply the Act in such a way that it violates students' rights, it is for *those* students to seek redress based on *that* application. Plaintiff's Fourteenth Amendment claim is vacated for lack of jurisdiction.

AFFIRMED IN PART; VACATED IN PART; costs awarded to appellees.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROBERT and BARBARA TENNISON, et al.,

Plaintiffs,

v.

NORMA PAULUS, et al.,

Defendants.

Civil No. 96-6232-TC

FINDINGS AND RECOMMENDATION

(Filed Feb. 26, 1997)

COFFIN, Magistrate Judge:

This is a civil rights action brought under 42 U.S.C. §§ 1983 and 2201. Plaintiffs, parents of students in the public schools of Oregon, allege that coercive, invasive, and discriminatory practices have been implemented in the schools of Oregon as a result of the enactment of the Oregon Educational Act for the 21st Century, ORS §§ 329.005 – 329.975, ("the Act"). Through this action plaintiffs seek to prevent the enforcement of the Act. Presently before the court are plaintiffs' motion (#68) to dismiss defendants' counterclaims for attorney's fees under 42 U.S.C. § 1988, defendant State of Oregon's motion (#74) for summary judgment, defendant South Lane School District's motion (#76) for summary judgment, and defendant Beaverton School District's motion (#80) for summary judgment. Also before the court are plaintiffs' motions (#97 and #100) to extend discovery and to strike certain affidavits.[1] For the reasons stated

[1] Plaintiffs also moved (#111), subsequent to oral argument, to supplement its response to the motions for summary judgment. Such motion is granted.

below, defendants' motions for summary judgment should be granted, and plaintiffs' motion to dismiss counterclaims should be denied. In addition, plaintiffs' motion to extend discovery and to strike certain affidavits are denied.

STANDARDS

Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The initial burden is on the moving party to point out the absence of any genuine issue of material fact. Once the initial burden is satisfied, the burden shifts to the opponent to demonstrate through the production of probative evidence that there remains an issue of fact to be tried. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Rule 56(c) mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. *Id.* at 32 [sic]. There is also no genuine issue of fact if, on the record taken as a whole, a rational trier of fact could not find in favor of the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio*

Corp., 475 U.S. 574, 586, 106 S.Ct. 1348, 1355 (1986); *Taylor v. List*, 880 F.2d 1040 (9th Cir. 1989).

On a motion for summary judgment, all reasonable doubt as to the existence of a genuine issue of fact should be resolved against the moving party. *Hector v. Wiens*, 533 F.2d 429, 432 (9th Cir. 1976). The inferences drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Valadingham v. Bojorquez*, 866 F.2d 1135, 1137 (9th Cir. 1989). Where different ultimate inferences may be drawn, summary judgment is inappropriate. *Sankovich v. Insurance Co. of North America*, 638 F.2d 136, 140 (9th Cir. 1981).

BACKGROUND

The Act is an extensive piece of legislation which undertakes a significant restructuring of the public school system.

By the legislation, Oregon has, according to plaintiffs, embraced the concept of "outcome based education" (OBE). Plaintiffs vigoro··sly contend, in this lawsuit, that OBE, and thus the Act, is unconstitutional.

The analysis of plaintiffs' claims is a difficult task because of plaintiffs' inability to focus their sights on any specific part of the legislation, or any specific acts that are authorized or mandated by the Act. Despite extensive briefing and several hours of hearings on defendants' motions for summary judgment, the court is still struggling to understand the precise basis for plaintiffs [sic] contentions that there is something unconstitutional

about the changes Oregon is making to its public educational system.

At the hearings, the court persistently asked counsel for the plaintiffs to identify with some sort of precision the nature of he [sic] asserted constitutional infirmities with the Act. The effort proved futile. Examples follow:

> THE COURT: Help me out there. What in terms of its specific language do you find to be unconstitutional on its face?
>
> MR. CRAMPTON: Very well, Your Honor, by way of example.
>
> THE COURT: That's what I want.
>
> MR. CRAMPTON: Very well. The response brief that we have filed in this case refers to the overarching philosophy of the Act as articulated in the very beginning of the Act. And if you will give me just a moment, I will attempt to locate the language, itself. The section to which I'm referring is ORS 329.015, Subpart (1).
>
> Quote: "The legislative assembly believes that education is a major civilizing influence on the development of a humane, responsible and informed citizenry, able to adjust to and grow in a rapidly changing world. Students must be encouraged to learn of their heritage and their place in the global society. The legislative assembly concludes that these goals are not inconsistent with the goals to be implemented in this chapter."
>
> That statement of educational philosophy, Your Honor, sheds light on the unconstitutional nature of this Act, for the reason that it commands that this philosophy infuse every activity

at all levels of the educational system. It further assumes that the citizenry must adjust to and grow in a rapidly changing world, as opposed to – Your Honor, one example of an outlook on life that would be contrary to this philosophy is one which posits that all change is not necessarily good; posits that certain enduring principles, such as objective truth and that resistance to change when the change conflicts with those truths, is, in fact, a very good thing.

Furthermore, this particular statement assumes the existence of a global society. It's Hilary Clinton's village, Your Honor. That, in itself, is a huge presupposition, which is consequently forced upon students at every level of education.

If I may take just a moment.

THE COURT: You find something unconstitutional in this language?

MR. CRAMPTON: Yes, sir, suggestive of unconstitutionality, because –

THE COURT: What specifically is unconstitutional about this language? What part of the constitution does it violate, and how?

MR. CRAMPTON: It violates, Your Honor, the First Amendment in that overarching protection accorded by the First Amendment to the freedom of the mind. The lead case, as His Honor is probably aware, is the *Barnette* case, which the defendants failed to cite at all in their motion and failed to deal with in their replies. *Barnette*, Your Honor, stands for the proposition that, unlike conduct by an individual in society which may, indeed, be regulated by the State, matters of the mind, opinions, attitudes and

beliefs are absolutely free. There is no jurisdiction in the state or, indeed, even in the federal government to reach matters of attitude.

THE COURT: You can't mean that, surely?

MR. CRAMPTON: I do, Your Honor.

THE COURT: Are you telling me it would be unconstitutional to flunk a student in geography who believes that the world is flat?

MR. CRAMPTON: No, sir. I think the Court misunderstands me, and that's perhaps my fault. Let me explain.

THE COURT: What do you mean by freedom of the mind?

MR. CRAMPTON: What I mean is *Barnette* involved an absolute requirement that students salute the flag and repeat the Pledge of Allegiance. Innocuous as that may sound, as noble as that may be as a goal for society that students actually respect the flag and the political system for which it stands, the Court struck down, Your Honor, as unconstitutional the State's attempt to compel students to affirm them, even to just say it, let alone adopt it as a world view.

By contrast, this Act goes far further than the *Barnette* case. This Act not only compels that they say it, it compels, Your Honor, by means of the performance-based educational system, assessment and perform – outcome-based education that has been made the standard in the State of Oregon, compels that students act on that kind of a belief, that students not just parrot the idea, but as was testified to by defendants Yvonne Katz and Judy Taccogna, students must internalize these attitudes, beliefs and opinions.

THE COURT: Well, getting back to the example you gave about saluting the flag, would there be something unconstitutional about the legislature setting as an educational goal respect for the flag?

MR. CRAMPTON: No, Your Honor, and that's where the defendants completely misunderstand our position. Setting a curriculum, choosing what subjects to be studied, choosing the goals that are to be encouraged, that students are to be introduced to that kind of activity short of absolute compulsion, Your Honor, is fine. That's what the schools are all about. That's what they should be about. It is not our position – and defendants insist on accusing us of trying to dictate to the State what the policy should be. That is as far from the truth as it can get, Your Honor.

Instead, as *Barnette* pointed out and has been reemphasized recently by the Supreme Court just last term, what the State can do by means of setting of goals, by means of encouraging, as His Honor's example was, by means of setting a standard which if students don't meet they may fail, is completely different from the choice of an unconstitutional means of achieving that goal. What we are about here is the means chosen by the State. Those means, transformational, outcome-based education, are unconstitutional.

THE COURT: Well, is there anything unconstitutional about the legislative assembly believing that education and expressing their belief that education is a major civilizing influence on the development of a humane, responsible and informed citizen?

MR. CRAMPTON: No, sir, Your Honor. There's absolutely nothing with wrong with the legislature believing that.

THE COURT: Able to adjust to and grow in a rapidly changing world.

MR. CRAMPTON: Correct.

THE COURT: Anything unconstitutional about that?

MR. CRAMPTON: So, sir.

THE COURT: Or encouraging students to learn of their heritage and their place in a global society?

MR. CRAMPTON: Nope. No, sir.

THE COURT: All right. So then there is nothing unconstitutional about that language?

MR. CRAMPTON: No, sir. What is unconstitutional is taking that language and forcing children to adopt that same outlook that the legislature has decided is best.

Transcript (#112) pp. 5-11.

As can be gleaned from the above colloquy, at the hearing plaintiffs [sic] counsel went full circle from challenging, as unconstitutional, the benign statement of educational philosophy found in ORS § 329.015(1), to conceding that there was nothing unconstitutional about the challenged language, but that there was something unconstitutional about "taking that language" and implementing the philosphy [sic] it expresses in some undescribed fashion.

It is hard to sink teeth into such a near-empty bowl of watery soup. Nonetheless, the court will try its best to articulate plaintiffs' claims in understandable fashion, and analyze whether constitutional issues are present.

DISCUSSION

Plaintiffs claim that the Act is unconstitutional both facially and as applied. Plaintiffs assert three claims of unconstitutionality: (1) the Act, by design and effect imposes an orthodoxy of attitudes, beliefs, and opinions upon public school students (violation of the right to the "freedom of the mind"); (2) the Act, by design and effect, unconstitutionally discriminates against viewpoints not in conformity with a state-endorsed philosophy; and (3) the Act, by design and effect, unconstitutionally displaces the parents with the state as the primary educator of children.

1. Freedom of the Mind

Plaintiffs characterize Oregon's prior educational system as one in which only school attendance was compelled. Under the Act however, plaintiffs allege that the state has initiated a system of transformational outcome-based education in which students are now compelled to learn. Thus, plaintiffs claim that the Act violates the "freedom of the mind."

Plaintiffs argue that forcing a student to meet a state's mold of a good citizen is unconstitutional, and

claim that under the Act a student is not merely encouraged to take advantage of better educational opportunities required of the state's public schools, but *must* perform in a way that satisfies and meets the state's goal of a humane, responsible, and informed citizenry. As the previously-cited colloquy reflects, plaintiffs cite ORS § 329.015(1) in support of their claim that the state is forcing its beliefs and attitudes on students.

ORS § 329.015(1) provides:

Educational goals.

> (1) The Legislative Assembly believes that education is a major civilizing influence on the development of a humane, responsible and informed citizenry, able to adjust to and grow in a rapidly changing world. Students must be encouraged to learn of their heritage and their place in the global society. The Legislative Assembly concludes that these goals are not inconsistent with the goals to be implemented under this chapter.

However, Plaintiffs' resort to case law only serves to demonstrate the lack of merit in this claim. The "freedom of the mind" theory is traced to the decision in *West Virginia v. Barnette*, 319 U.S. 624, 63 S.Ct. 1178 (1943).

In *Barnette*, the Court struck down a regulation compelling children in public schools to salute the American Flag. The situation in *Barnette* is a far cry from what we have here. Not only did the West Virginia Board of Education order that the salute to the Flag become a regular part of the program of activities in the public schools, but it also provided that refusal to salute the Flag be regarded as an act of insubordination and was to be dealt with

accordingly. *Id* at 626. Thus, the Court found that the actions of the board in compelling the flag salute and pledge transcended constitutional limitations and invaded the sphere of intellect and spirit which it is the purpose of the First Amendment to reserve from official control. The Court did note, however, that national unity is an end which officials may foster by persuasion and example. It was compulsion the Court found to be impermissible. *Id.* at 640-41.

Plaintiffs attempt to hang their hat on *Barnette* in contending "[b]y definition, performance-based or outcomes-based education calls for methods of instruction that bypass 'persuasion and example' in favor of behavioral manipulation or outright compulsion." Plaintiffs' Memo (#90) at pp. 26-27. Plaintiffs cite to their amended complaint (¶¶ 121-127, 131) to support this contention. This portion of the complaint does not contain any definition of outcome-based education nor does it cite to any portion of the Act that compels an orthodoxy of belief or which forces students to confess by word or act their belief therein. *Barnette*, 319 U.S. at 642. Other cases cited by plaintiffs similarly provide no basis for plaintiffs' claim. *See Meyer v. Nebraska*, 43 S.Ct. 625 (1923) (law provided fine and jail time to any teacher teaching language other then [sic] English to students who have not successfully passed the eighth grade); *Pierce v. Society of the Sisters of the Holy Name of Jesus and Mary*, 45 S.Ct. 571 (1925) (misdemeanor for sending a child to any school other than public school).

Although Plaintiffs contend that under the Act students "must perform" or "must learn" in a way that meets the state's goals, the expressed legislative goal is

that students "must be **encouraged** to learn . . . " ORS § 329.015(1) (emphasis added). The plaintiffs do not point to any section of the Act compelling an orthodoxy of belief, such as the criminal sanctions noted in *Pierce* and *Meyer* above. Furthermore, this court's review of the Act does not reveal any such compulsion.

This lawsuit has the cart not only ahead of the horse, but in search of a horse. Without a factual context to develop their concern that some public school districts or teachers might implement the Act in a way that violates the Constitution, plaintiffs are ringing hypothetical alarms in response to abstract language. Again, to quote from the discussion at the hearing in an effort to understand plaintiffs' reasoning:

> THE COURT: Well, when you say "compelling students to learn," what precisely do you mean by that?
>
> . . . .
>
> Is that anything other than bureaucratic language setting a goal that students should learn the subject matter?
>
> MR. CRAMPTON: Absolutely right. This is a system of behavioral modification, radically different from hoping they are going to learn. As it says in the Act, again, back to the facial language, itself, that I read a moment ago, we will assume that all students can learn.
>
> What the State Department of Education has taken with that language and I think rightfully read in the Act –

THE COURT: Is there something wrong with that assumption?

MR. CRAMPTON: Absolutely. What is wrong with it is they have turned it into a system of compelled learning. Failure is not an option. You will learn. All students will master the outcomes. All students will perform as the State –

THE COURT: What is a student doing in school if they can't learn? They are not day care centers. What's wrong with the assumption that all students can learn?

MR. CRAMPTON: It's when "can" changes to "must," all students will learn, all students must learn, Your Honor, that violates the freedom of the mind.

THE COURT: Freedom of the mind not to learn?

MR. CRAMPTON: Even not to learn, yes, Your Honor. . . .

THE COURT: You see, you have to get particular here, because it just seems to me if you rest on the abstract, you get nowhere. To tell me that there's something unconstitutional about compelling students to learn certain subjects to advance in school, to me, is nonsense. Obviously they have to demonstrate a proficiency in subjects before they advance, or else what are they doing in school?

MR. CRAMPTON: Your Honor, students have always had the option to fail. No longer in Oregon. His Honor wants to go to the specifics.

THE COURT: The option to fail.

MR. CRAMPTON: Yes, Your Honor.

THE COURT: That's a constitutional right? To fail?

MR. CRAMPTON: When it involves freedom of the mind, yes, sir.

THE COURT: Is this case about terminology and semantics? What's the difference between not advancing the student by failing the student and not advancing the student by not issuing the student the Certificate of Mastery?

MR. CRAMPTON: I'm sorry?

THE COURT: Any difference?

MR. CRAMPTON: I'm sorry. I didn't follow that, Your Honor.

THE COURT: Well, my understanding is unless you demonstrate a proficiency in certain subject areas, you don't receive a certificate. Instead of a traditional grade, an A and a B, a C or a D and so forth down to F, you now have a system that issues Certificates –

MR. CRAMPTON: Yes.

THE COURT: – of Mastery.

MR. CRAMPTON: Your Honor, what the Act posits is all students will achieve that certificate. That's completely different from the former system and from constitutional requirements.

THE COURT: Well, I assume that that's a lofty goal, but I assume that, reality being what it is, that not all students will get their certificates.

MR. CRAMPTON: That's not what the Act assumes. The Act assumes all students will learn. That's the difference. All students will learn.

Transcript (#104) at 37-40.

As noted during the above colloquy, students apparently no longer are to receive traditional letter grades (ranging from "A" to "F") in specific subjects. Pursuant to changes mandated by the Act, students are to receive "Certificates of Mastery" to reflect proficiency in what can be described as groups of subjects. In the traditional model, students were still required to get passing grades, in the core subjects to obtain their "diplomas."[2] In the new model, letter grades are apparently discarded in favor of demonstration of proficiency or "mastery."

The wisdom of these changes are within the exclusive province of the legislature. The Constitution does not mandate that the state school system be locked into the traditional status quo. There is no reason to believe that the Act implicates unconstitutional practices where the former system of education did not.[3] As noted, plaintiffs' lawsuit is devoid of any factual basis suggesting that constitutional violations are necessitated by the Act. Plaintiffs have the rules of construction backwards – courts are to interpret statutes so as to avoid conflicts with the Constitution if possible, not the other way

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[2] OAR 581-22-316

[3] Plaintiffs miss the irony in the fact that the *Barnette* case, upon which they so heavily rely, involved a compulsory flag salute which arose in the traditional educational system.

around. *Frisby v. Schultz*, 487 U.S. 474, 483, 108 S.Ct. 2495, 2501 (1988).

The "compulsion to learn" argument is much ado about semantics. Students will continue being students under the new system. Hopefully all will learn and "master" all subjects, but undoubtedly some will not. The Act does not contemplate "compelling" students to learn against their will and abilities by subjecting them to corporal punishment, imprisoning them, or imposing other sanctions that would implicate various sections of the Constitution. If "failing" is some sort of constitutional right, as plaintiffs urge, students still have that option.

Plaintiffs attempt to go beyond the four corners of the Act and point to how South Lane and Beaverton School districts implement the Act to argue that students are compelled to adopt an orthodoxy of belief. Plaintiffs claim that these districts have set such goals as "assuring the success of all students," that "each student will attain the academic and learning skills essential to all areas of education," that "each student will possess the personal attributes and skills essential to the pursuit of his/her educational and occupational goals," and that "students will apply a global perspective to their lives." Again, I fail to see how such goals run afoul of the Constitution. Furthermore, if such goals did violate the Constitution a facial attack on the Act is not the proper vehicle for addressing such violation. As noted, plaintiffs do not demonstrate how the Act compels students to adopt such goals.

Plaintiffs argue strenuously that this court is required to look at how the Act is applied by the districts in order

to determine if it is facially invalid. Plaintiffs cite *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 112 U.S. 2395 (1992) to support this argument. As noted in defendant State of Oregon's Supplemental Memorandum (#104), *Forsyth County* requires courts to consider evidence of the interpretation and application of the challenged law in resolving a facial challenge if the law on its face is a prior restraint or facially overbroad in apparent violation of the First Amendment. Such evidence is necessary to determine whether an inadequacy on the face of the challenged law is remedied by a narrow construction.

In this case, the Act is not on its face a prior restraint, nor is it facially overbroad or otherwise inconsistent with the First Amendment. In this facial challenge, plaintiffs must "establish that no set of circumstances exist under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 2100 (1987). Plaintiffs have not attempted to make such a showing.

2. Viewpoint Discrimination

Plaintiffs again cite ORS § 329.015 and claim that this provision endorses a statement of philosophy of relativism, evolutionism, and globalism and, by implication, necessarily rejects and discriminates against student expressions inconsistent with that philosophy. Plaintiffs support this argument by citing to *Tinker v. Des Moines Indep. School Dist.*, 393 U.S. 503, 89 S.Ct. 733 (1969).

In *Tinker*, the Court found that a school's regulation prohibiting the wearing of armbands in protest of the Vietnam hostilities and providing for the suspension of any student refusing to remove such armband was an

unconstitutional denial of a student's right of expression absent a demonstration of any facts which might reasonably have led authorities to forecast substantial disruption with school activities as a result of the armbands. There is no similar regulation in this case. Plaintiffs do not point to any provision in the Act that provides for the suspension of students who express views inconsistent with "relativism, evolutionism, and globalism." Nothing in the Act prevents students from expressing their views.

Again resorting to the hearing on the motions in an effort to clarify plaintiffs' "viewpoint discrimination" argument, we find hypothetical horribles being raised – e.g., students might be required to "celebrate cannibalism,"[4] or might be required to "embrace and celebrate [homosexuality]."[5] The simple answer to these concerns is that nothing in the Act requires such a result, and there is no evidence before the court suggesting that any such viewpoint discrimination is taking place with respect to any of these plaintiffs (or anyone else for that matter). If plaintiffs' concerns ever become reality, any and all students impacted by such concrete actions will have the ability to seek redress through the judicial system, just as the plaintiffs did in *Tinker*.

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[4] Transcript at p. 22.

[5] Transcript at p. 22.

3. Usurpation of Parental Right to Determine Education of Their Children

Plaintiffs claim that the goals adopted by the state legislature were designed to achieve the objective of preparing the children to serve the state's economic interest. In support of this contention plaintiffs cite ORS § 329.035(3) (a restructured educational system is necessary to achieve the state's goal of the best educated citizens in the nation and the world), and the Strategic Plan issued by the Workforce Quality Council (Attached to #74 as Ex. 4 of the Steigler Aff. at p. 7) ("Oregon will have the best-educated and prepared workforce in the country by 2000 and a workforce equal to any in the world by 2010"). Plaintiffs then contend that to accomplish this objective the interests of parents are necessarily subordinated to that of the state. Plaintiffs cite ORS § 329.035(4)(e) and ORS § 329.125 in support. ORS § 329.035(4)(e) provides:

> The specific objectives of this chapter and ORS 329.900 to 329.975 are:
>
> . . . .
>
> To establish partnerships among business, labor and the educational community in the development of standards for academic professional technical endorsements and provide work-related learning experiences necessary to achieve those standards.

ORS § 329.125 provides:

> Policy on parental and community participation.
>
> The Legislative Assembly recognizes that students in public elementary and secondary schools can best reach the levels of performance expected under the provisions of this chapter with parental and community participation in the education process. It is, therefore, recommended but not required that: (1) School districts provide opportunities for parents or guardians to be involved in establishing and implementing educational goals and to participate in decision-making at the school site; (2) Employers recognize the need for parents or guardians and members of the community to participate in the education process not only for their own children but for the educational system; (3) Employers be encouraged to extend appropriate leave to parents or guardians to allow greater participation in that process during school hours; and (4) School districts enter into partnerships with business, labor and other groups to provide workplace-based professional development opportunities for their educational staff.

Plaintiffs contend that because parents are missing from the partnership outlined in ORS § 329.035(4)(e) and because in ORS § 329.125 it is only recommended that school districts provide opportunities for parents to be involved in establishing and implementing educational goals, parents interests are necessarily subordinated to that of the state. Plaintiffs go on to claim that the Act unconstitutionally permits the state to intrude into the

home to see that parents are reinforcing the state's education/economic partnership. Once again, plaintiffs do not cite to any provision in the Act in attempt [sic] to support this claim.

Plaintiffs again rely on *Pierce* and *Meyer*. For example, the Supreme Court has stated:

> The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public school teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.

Pierce, 268 U.S. at 535. However, nothing in the Act prevents students from attending private school or home schooling. Furthermore, the Act expressly provides that it is not intended to apply the certificates of mastery programs or standards to students taught by parents or private teachers. ORS § 329.465(7). In addition, states may prescribe certain educational standards.

> A state's interest in establishing standards for the education of its young in order to prepare them for participation in American political and economic processes as well as to "nurture and develop [their] human potential," [*Wisconsin v. Yoder*, 406 U.S. 205, 239, 92 S.Ct. 1526, 1545 (1972) (White, J. concurring)], overrides the interest of parents to teach their children in a religious school or at home free from governmental interference.

Blackwelder v. Safnauer, 689 F.Supp. 106, 135 (N.D.N.Y. 1988), *appeal dism'd*, 866 F.2d 548 (2nd Cir. 1989). In this case, the Act does not unconstitutionally restrict the parental right to determine the education of their children.

CONCLUSION

This lawsuit primarily is bottomed upon hypothetical scenarios that simply do not exist. The Act is facially valid. If constitutional violations occur over time as particular school districts, schools, and teachers undertake to implement the Act, such can be dealt with by the usual method of granting the affected parties their redress in court. The defendants' motions (#'s 74, 76, and 80) should be granted. The plaintiffs' motion (#100) to [sic] is denied as moot.[6] In addition, The plaintiffs' motion (#97) for an extension of time to conduct discovery in order to respond to the motions for summary judgment is denied. Plaintiffs have attacked the constitutionality of the Act on its face. The Act has been shown to be constitutionally valid, and it is not for plaintiffs to search at this stage of the proceedings for some factual basis for their largely hypothetical arguments. *See* Fed. R. Civ. P. 11(b)(3). Finally, plaintiffs' motion (#68) to dismiss defendants' counterclaims for attorneys' fees should be denied, as such claims merely track the practice in this District of notifying plaintiffs in 42 U.S.C. § 1983 actions of the defendants' intention to seek an award of fees under § 1988 if the defendants emerge as the prevailing parties.

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[6] This court did not consider the affidavits in its decision.

DATED this 26th day of February, 1997.

/s/ Thomas M. Coffin
THOMAS M. COFFIN
United States Magistrate
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROBERT and BARBARA TENNISON, et al., Plaintiffs,	)	Civil No. 96-6232-TC
v.	)	ORDER
NORMA PAULUS, et al., Defendant.	)	(Filed Apr. 11, 1997)

Magistrate Judge Thomas M. Coffin filed Findings and Recommendation on February 26, 1997, in the above entitled case. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the magistrate judge's report. *See* 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982).

Plaintiffs have timely filed objections. *See* Fed. R. Civ. P. 6(a) and (e). I have, therefore, given *de novo* review of Magistrate Judge Coffin's rulings.

I ADOPT Magistrate Judge Coffin's Findings and Recommendation filed February 26, 1997, in its entirety. Defendants' motions (##74, 76, 80) are granted. Plaintiffs' motion to dismiss (#68) defendants' counterclaims for attorneys' fees is denied.

IT IS SO ORDERED.

DATED this 10th day of April, 1997.

/s/ Michael R. Hogan
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROBERT and BARBARA TENNISON, TYREL TENNISON, CURTIS and TERESA DEATHERAGE, VELVET FREDERICK, LINDA SLOANE, ELIZABETH SLOANE, SABRINA SLOANE, SUE DOWNEY, JOSHUA DOWNEY, and SHANNON DOWNEY,

Plaintiff,

v. **Civil No. 96-6232-TC**

NORMA PAULUS, OREGON STATE BOARD OF EDUCATION MEMBERS SUSAN MASSEY, TOM McCLINTOCK, JEANA WOOLLEY, JUDITH STIEGLER, JOSEPH BURDIC, WAYNE FELLER, JILL KIRK, SOUTH LANE SCHOOL DISTRICT 45J3, BOB SISK, KRISTA D. PARENT, SHERRY HIGGINS, RICK SETTELMEYER, LESLIE RUBINSTEIN, MARY KOEPFLE, CAROL QUACKENBUSH, JOHN PETRICK, BEAVERTON SCHOOL DISTRICT NO. 48, YVONNE KATZ, JUDY TACCOGNA, CHUCK MEYER, SHERRE CALOURI, JOHN WILKINS, DAVID GEIGER, ROBERT SHOOK,

Defendant.

JUDGMENT
(Filed Apr. 11, 1997)

This action is dismissed.

Dated: April 11, 1997.

Donald M. Cinnamond, Clerk

by /s/ Christy Weller
Christy Weller, Deputy

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT TENNISON; BARBARA TENNISON, on behalf of themselves and as next friends for their minor child Tyrel Tennison; CURTIS DEATHERAGE; TERESA DEATHERAGE, on behalf of themselves and as next friends for their minor child Velvet; FREDERICK SLOANE; LINDA SLOANE, on behalf of themselves and as next friends for their minor children Elizabeth Sloane and Sabrina Sloane; SUE DOWNEY, on behalf of herself and as next friend for her minor children Joshua Downey and Shannon Downey,

Plaintiffs-Appellants,

v.

NORMA PAULUS; Superintendent of Public Instruction for the State of Oregon; OREGON STATE BOARD OF EDUCATION, SUSAN MASSEY, TOM McCLINTON, JEANA WOOLLEY, JUDITH STIEGLER, ANITA DECKER, FELIPE VELOZ, in their official capacities as members of the State Board of Education; SOUTH LANE SCHOOL DISTRICT 45J3;

C.A. No. 97-35466

D.C. No. CV-96-06232-TC

ORDER

(Filed Aug. 3, 1998)

BOB SISK, in his official capacity as Superintendent and Budget Director of South Lane School District; KRISTA D. PARENT, in her official capacity as Assistant Superintendent and Curriculum Director of South Lane School District; SHERRY HIGGINS, RICK SETTELMEYER, LESLIE RUBINSTEIN, MARY KOEPFLE, CAROL QUACKENBUSH, JOHN PETRICK, in their official capacities as members of the South Lane School Board; BEAVERTON SCHOOL DISTRICT NO. 48; YVONNE KATZ, in her official capacity as Superintendent of Beaverton School District; JUDY TACCONGA, in her official capacity as Executive Administrator for Restructuring Support Services for the Beaverton School District; CHUCK MEYERS, SHERRE CALOURI, JOHN WILKINS, DAVID GEIGER, ROBERT SHOOK, in their official capacities as members of the Beaverton School Board,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, Chief District Judge, Presiding

Before: SKOPIL, HAWKINS, and THOMAS, Circuit Judges

The panel has voted to deny the petition for rehearing. The full court has been advised of the en banc suggestion and no judge of the court has requested a vote. Accordingly, the petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 97-35466
CT/AG#: CV-96-06232-TC

ROBERT TENNISON; BARBARA TENNISON, on behalf of themselves and as next friends for their minor child Tyrel Tennison; CURTIS DEATHERAGE; TERESA DEATHERAGE, on behalf of themselves and as next friends for their minor child Velvet; FRDEREICK [sic] SLOANE; LINDA SLOANE, on behalf of themselves and as next friends for their minor children Elizabeth Sloane and Sabrina Sloane; SUE DOWNEY, on behalf of herself and as next friend for her minor children, Joshua Downey and Shannon Downey

Plaintiffs – Appellants

v.

NORMA PAULUS, Superintendent of Public Instruction for the State of Oregon; OREGON STATE BOARD OF EDUCATION, SUSAN MASSEY, TOM McCLINTON, JEANA WOOLLEY, JUDITH STIEGLER, ANITA DECKER, FELIPE VELOZ, in their official capacities as members of the State Borad [sic] of Education; SOUTH LANE SCHOOL DISTRICT 45J3; BOB SISK, in his official capacity as Superintendent and Budget Director of South Lane School District; KRISTA D. PARENT in her official capacity as Assistant Superintendent and Curriculum Director of South Lane School District; SHERRY HIGGINS, RICK SETTELMEYER, LESLIE RUBINSTEIN, MARY KOEPFLE, CAROL QUACKENBUSH, JOHN PETRICK, in their official capacities as members of the South Lane School Board; BEAVERTON SCHOOL DISTRICT NO 48; YVONNE KATZ, in her official capacity as Superintendent of Beaverton School District; JUDY TACCONGA, in her official capacity as Executive

Administrator for Restructuring Support Services for the Beaverton School District; CHUCK MEYERS, SHERRE CALOURI, JOHN WILKINS, DAVID GEIGER, ROBERT SHOOK, in their official capacities as members of the Beaverton School Board

Defendants – Appellees

(Filed Aug. 17, 1998)

APPEAL FROM the United States District Court for the District of Oregon (Eugene).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Oregon (Eugene) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED in part VACATED in part; costs awarded to appellees.

Filed and entered June 9, 1998

1997 Oregon Revised Statutes

Chapter 329

1997 EDITION

Oregon Educational Act for the 21st Century; Educational Improvement and Reform

ACT FOR 21st CENTURY; REFORM

EDUCATION AND CULTURAL FACILITIES

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FOR THE 21st CENTURY

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CROSS REFERENCES

Higher education proficiency-based admission standards development, 1997 c.653 s.1

329.485

Private alternative programs; assessment of students, 336.637

329.905

Literacy, adult, 344.765

329.965

Education and Workforce Policy Advisor, statewide data system, development, 285A.461

OREGON EDUCATIONAL ACT
FOR THE 21st CENTURY

(Generally)

329.005 Oregon Educational Act for the 21st Century; duties of department; evaluation by legislature. (1) This chapter shall be known as the Oregon Educational Act for the 21st Century.

(2) The Department of Education shall be the coordinating agency for furthering implementation of this chapter. This chapter shall be subject to review by the Legislative Assembly until the year 2001 for purposes of evaluating progress toward achieving the various mandates of this chapter and also effecting any necessary changes.

(3) The appropriate legislative interim committee shall:

(a) Develop the form and content expected of the ongoing review described in this section;

(b) Notify the appropriate agencies of expectations; and

(c) Receive and evaluate regular reports from the Department of Education and other public agencies.

(4) This review outline may be changed as needed in succeeding years. [(3) and (4) enacted as 1991 c.693 s.1a; 1993 c.45 s.22; (1) and (2) formerly 326.705]

329.007 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Academic content standards" or "academic standards" means expectations of student knowledge and skills in identified content areas adopted by the State Board of Education under ORS 329.045.

(2) "Administrator" includes all persons whose duties require an administrative license.

(3) "Board" or "state board" means the State Board of Education.

(4) "21st Century Schools Council" means a council established pursuant to ORS 329.704.

(5) "Content areas" includes mathematics, science, history, geography, economics, civics, English, second languages and the arts. English includes, but is not limited to, reading and writing. The arts includes, but is not limited to, literary arts, performing arts and visual arts.

(6) "Department" means the Department of Education

(7) "District planning committee" means a committee composed of teachers, administrators and public members established for the purposes of ORS 329.537 to 329.605.

(8) "Parents" means parents or guardians of students who are covered by this chapter.

(9) "School district" means a school district as defined in ORS 332.002, an education service district, a state-operated school or any legally constituted combination of such entities.

(10) "School Improvement and Professional Development program" means a formal plan submitted by a school district and approved by the Department of Education according to criteria specified in ORS 329.675 to 329.745 and 329.790 to 329.820.

(11) "Second languages" means any foreign language or American Sign Language.

(12) "Teacher" means any licensed employee of a school district who has direct responsibility for instruction, coordination of educational programs or supervision of students and who is compensated for such services from public funds. "Teacher" does not include a school nurse, as defined in ORS 342.455, or a person whose duties require an administrative license.

(13) "Work-related learning experiences" means opportunities in which all students may participate in high quality programs that provide industry related and subject matter related learning experiences that prepare students for further education, future employment and lifelong learning. [1995 c.660 s.2]

Note: 329.007 was added to and made a part of ORS chapter 329 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

329.010 [Repealed by 1957 c.678 s.1]

329.015 Educational goals. (1) The Legislative Assembly believes that education is a major civilizing influence on the development of a humane, responsible and informed citizenry, able to adjust to and grow in a rapidly changing world. Students must be encouraged to learn of their heritage and their place in the global society. The Legislative Assembly concludes that these goals are not inconsistent with the goals to be implemented under this chapter.

(2) The Legislative Assembly believes that the goals of kindergarten through grade 12 education are:

(a) To demand academic excellence through a rigorous academic program that equips students with the information and skills necessary to pursue the future of their choice;

(b) To provide an environment that motivates students to pursue serious scholarship and to have experience in applying knowledge and skills and demonstrating achievement; and

(c) To provide students with lifelong academic skills that will prepare them for the ever-changing world. [Formerly 326.710; 1995 c.660 s.3]

329.020 [Repealed by 1957 c.678 s.1]

329.025 Characteristics of school system. It is the intent of the Legislative Assembly to maintain a system of public elementary and secondary schools that allows students, parents, teachers, administrators, school district boards and the State Board of Education to be accountable for the development and improvement of the public school system. The public school system shall have the following characteristics:

(1) Provides equal and open access and educational opportunities for all students in the state regardless of their linguistic background, culture, race, gender, capability or geographic location;

(2) Assumes that all students can learn and establishes high, specific skill and knowledge expectations and recognizes individual differences at all instructional levels;

(3) Provides special education, compensatory education, linguistically and culturally appropriate education and other specialized programs to all students who need those services;

(4) Provides students with a solid foundation in the skills of reading, writing, problem solving and communication;

(5) Provides opportunities for students to learn, think, reason, retrieve information, use technology and work effectively alone and in groups;

(6) Provides for rigorous academic content standards and instruction in mathematics, science, history, geography, economics, civics and English;

(7) Provides students an educational background to the end that they will function successfully in a constitutional

republic, a participatory democracy and a multicultural nation and world;

(8) Provides students with instruction in, but not limited to, health, physical education, second languages and the arts;

(9) Provides students with the knowledge and skills that will provide the opportunities to succeed in the world of work, as members of families and as citizens;

(10) Provides students with the knowledge and skills to take responsibility for their decisions and choices;

(11) Provides opportunities for students to learn through a variety of teaching strategies;

(12) Emphasizes involvement of parents and the community in the total education of students;

(13) Transports children safely to and from school;

(14) Ensures that the funds allocated to schools reflect the uncontrollable differences in costs facing each district;

(15) Ensures that local schools have adequate control of how funds are spent to best meet the needs of students in their communities; and

(16) Provides for a safe, educational environment. [Formerly 326.715; 1995 c.660 s.4]

329.030 [Repealed by 1957 c.678 s.1]

329.035 Findings; objectives. The Legislative Assembly declares that:

(1) The State of Oregon believes that all students can learn and should be held to rigorous academic content standards and expected to succeed.

(2) Access to a quality education must be provided for all of Oregon's youth regardless of linguistic background, culture, race, gender, capability or geographic location.

(3) A restructured educational system is necessary to achieve the state's goals of the best educated citizens in the nation and the world.

(4) The specific objectives of this chapter and ORS 329.905 to 329.975 are:

(a) To achieve the highest standards of academic content and performance;

(b) In addition to a diploma, to establish the Certificates of Initial Mastery and Advanced Mastery as evidence of new high academic standards of performance for all students;

(c) To establish alternative learning environments and services for students who experience difficulties in achieving state or local academic standards;

(d) To establish early childhood programs and academic professional technical programs as part of a comprehensive educational system; and

(e) To establish partnerships among business, labor and the educational community in the development of standards for academic professional technical indorsements and provide work-related learning experiences necessary to achieve those standards. [Formerly 326.720; 1995 c.660 s.5]

329.040 [Repealed by 1963 c.544 s.52]

329.045 Revision of Common Curriculum Goals including Essential Learning Skills and academic content standards; school district control. (1) In order to achieve the goals contained in ORS 329.025 and 329.035, the State Board of Education shall regularly and periodically review and revise its Common Curriculum Goals. This includes Essential Learning Skills and rigorous academic content standards in mathematics, science, history, geography, economics, civics and English. School districts shall maintain control over course content, format, materials and teaching methods but shall ensure that students receive instruction in the academic content areas and in health and physical education. The rigorous academic content standards shall reflect the knowledge and skills necessary for achieving Certificates of Mastery and diplomas pursuant to ORS 329.025 and as described in ORS 329.447. The regular review shall involve teachers and other educators, parents of students and other citizens and shall provide ample opportunity for public comment.

(2) The State Board of Education shall continually review all adopted standards and shall raise the standards in academic content areas to the highest levels possible.

(3) The Common Curriculum Goals reviewed and revised by the board under subsection (1) of this section shall also include goals in physical education and health. In accordance with the Common Curriculum Goals, school districts shall offer instruction in content areas, physical education and health. [Formerly 326.725; 1995 c.660 s.6]

329.050 [Repealed by 1963 c.544 s.52]

329.055 [Formerly 326.735; repealed by 1995 c.660 s.50]

329.060 [Repealed by 1963 c.544 s.52]

329.065 Adequate funding required. Nothing in this chapter is intended to be mandated without adequate funding support. Therefore, those features of this chapter which require significant additional funds shall not be implemented statewide until funding is available. [Formerly 326.740]

329.070 [Repealed by 1963 c.544 s.52]

329.075 Statewide implementation; rules; duties of department; pilot programs; assessments defined. (1) The State Board of Education shall adopt rules, in accordance with ORS 183.025 and 183.310 to 183.550, as necessary for the statewide implementation of this chapter. The rules shall be prepared in consultation with appropriate representatives from the educational and business and labor communities.

(2) The Department of Education shall be responsible for coordinating research, planning and public discussion so that activities necessary to the implementation of this chapter can be achieved. Actions by the department to fulfill this responsibility and to increase student achievement may include, but are not limited to:

(a) Updating Common Curriculum Goals to meet rigorous academic standards;

(b) Developing criterion-referenced assessments including performance-based, content-based and other assessment mechanisms to test knowledge and skills;

(c) Establishing criteria for Certificates of Initial Mastery and Advanced Mastery, and for benchmarks at grades 3, 5, 8 and 10;

(d) Establishing criteria for early childhood improvement programs;

(e) Amending the application process for school improvement grants;

(f) Researching and developing public school choice plans;

(g) Working with the Education and Workforce Policy Advisor and the Office of Community College Services to develop no fewer than six broad career indorsement areas of study; and

(h) Establishing criteria for learning options that may include alternative learning centers.

(3) The State Board of Education shall create, by rule, a process for school districts to initiate and propose pilot programs. The rules shall include a process for waivers of rules and regulations and a process for approval of the proposed pilot programs.

(4) The Department of Education shall:

(a) Evaluate pilot programs developed pursuant to ORS 329.690 using external evaluators to provide data that specify the educational effectiveness, implementation requirements and costs of the programs and to describe what training, funding and related factors are required to replicate pilot programs that are shown to be effective;

(b) Present to the State Board of Education and the appropriate legislative committee an annual evaluation of all pilot programs; and

(c) Include funding for the implementation and evaluation of pilot programs in the Department of Education budget.

(5) As used in this section:

(a) "Criterion-referenced assessment" means testing of the knowledge or ability of a student with respect to some standard.

(b) "Content-based assessment" means testing of the understanding of a student of a predetermined body of knowledge.

(c) "Performance-based assessment" means testing of the ability of a student to use knowledge and skills to create a complex or multifaceted product or complete a complex task. [Formerly 326.745; 1995 c.660 s.8; 1997 c.652 s.21]

Note: Section 7, chapter 660, Oregon Laws 1995, provides:

Sec. 7. Implementation of extended school year. Prior to implementation of an extended school year, the Department of Education shall study the fiscal, academic, societal and emotional impact of extended school year models being used in Oregon, the United States and other countries. The department shall report the findings of the study to the Legislative Assembly. [1995 c.660 s.7]

Note: Sections 1 and 3, chapter 739, Oregon Laws 1997, provide:

Sec. 1. Structure of Intellect Model School pilot program. (1) The Department of Education shall establish a pilot program that shall use as its model the Structure of Intellect Model School. The pilot program shall be for the 1997-1998, 1998-1999 and 1999-2000 school years. The pilot program shall provide schools with the ability to:

(a) Administer detailed intellectual assessments;

(b) Administer a physical screening that identifies barriers to learning;

(c) Develop a student-specific program driven by the assessments and physical screening; and

(d) Administer learning development exercises used by every student within the school that strengthen their ability to learn.

(2) The Department of Education shall establish pilot programs in a variety of settings. The department shall cover the range of demographic and social profiles within the State of Oregon in the selection of school districts for the pilot programs. The pilot programs shall examine the advantage of early intervention, remediation and intellectual development.

(3) The selected school districts shall implement the pilot programs described in this section.

(4) In each year of the pilot program, a school district with a pilot program shall report to the department on the program. The report shall include:

(a) An evaluation of the program;

(b) An evaluation of the program's impact on special education referrals;

(c) Recommendations about the program;

(d) Costs of the program; and

(e) Any other relevant information, as determined by the department.

(5) The Department of Education shall award grants to school districts that are selected for pilot programs under this section. The grants shall be in addition to and not in lieu of any other grants or distributions to the school district from the department. [1997 c.739 s.1]

Sec. 3. Evaluation of pilot program. The Department of Education shall complete a comprehensive evaluation of the pilot program described in section 1 of this Act. The department shall report the results of the evaluation to the Seventy-first Legislative Assembly. [1997 c.739 s.3]

329.077 Waiver or extension of timelines; requirements; process. (1) A school district may submit a request to the State Board of Education for a waiver or an extension of any timeline or timelines for program implementation in this chapter or chapter 693, Oregon Laws 1991. The request shall state the reasons the district needs the waiver or cannot meet the statutory timeline or timelines. The request must also include a written plan detailing the steps the district will take to achieve full implementation of the program or programs for which the waiver or extension is requested. The written plan shall be for a period of one or two years and shall include a method to measure the progress toward implementation of the program or programs for which a waiver or an extension is sought. The waiver or extension shall not exceed two school years.

(2) Upon receipt of a request for a waiver or an extension, the board shall grant the waiver or extension if it determines that the district has good cause to request a delay in the implementation of the program or programs and determines that the written plan is likely to achieve program implementation within the time requested for the waiver or extension.

(3) The board shall establish by rule the process for applying for and obtaining a waiver or an extension of a timeline, including the criteria for the approval of a written plan of implementation and the grounds constituting good cause for granting the delay in implementation of the program. [1995 c.660 s.30]

Note: 329.077 was added to and made a part of ORS chapter 329 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

329.080 [Repealed by 1963 c.544 s.52]

(Assessing Effectiveness)

329.085 Assessment required; report to school district; standards. (1) To facilitate the attainment and successful implementation of educational standards under ORS 326.051(1)(a), 329.025 and 329.035, the State Board of Education or its designee shall assess the effectiveness of each public school district. The findings of the assessment shall be reported to the school district within six months.

(2) The board shall establish the standards, including standards of accessibility to educational opportunities, upon which the assessment is based.

(3) On a periodic basis, the board shall review existing standards and, after public hearings and consultation with local school officials, shall adopt by rule a revised set of standards. [Formerly 326.755; 1995 c.660 s.10a; 1997 c.17 s.1]

329.090 [Repealed by 1963 c.544 s.52]

329.095 School district self-evaluations; local district improvement plans; department's technical assistance. (1) The State Board of Education shall require school districts and schools to conduct self-evaluations and update their local district improvement plans on a biennial basis. The self-evaluation process shall involve the public in the setting of local goals. The school districts shall ensure that representatives from the demographic groups of their school population are invited to participate in the development of local district improvement plans to achieve the goals.

(2) As part of setting local goals, school districts are encouraged to undertake a communications process that involves parents, students, teachers, school employees and community representatives to explain and discuss the local goals and their relationship to programs under this chapter.

(3) At the request of the school district, Department of Education staff shall provide ongoing technical assistance in the development and implementation of the local district improvement plan.

(4) The local district improvement plan shall include district efforts to achieve local efficiencies and efforts to make better use of resources. Efficiencies may include,

but are not limited to, use of magnet schools, energy programs, public and private partnerships, staffing and other economies.

(5) All school districts shall, as part of their local district improvement plan, develop programs and policies to achieve a safe, educational environment.

(6) Local district improvement plans shall include the district's and school's short-term and long-term plans for staff development.

(7) Local district and school goals and district and school improvement plans shall be made available to the public.

(8) The self-evaluations shall include a review of demographics, student performance, student access to and utilization of educational opportunities and staff characteristics. However, failure to complete the self-evaluation process shall not constitute grounds for withholding of state moneys. [Formerly 326.760; 1995 c.660 s.11]

329.100 [Repealed by 1963 c.544 s.52]

329.105 Collection of data and production of school profiles by state superintendent. (1) The Superintendent of Public Instruction shall collect data and produce annual school district and school profiles containing information on demographics, student performance in schools, student access to educational opportunities and staff characteristics described in this chapter. In addition, school district profiles shall include a concise budget report of the school district, including revenue and expenditures of the district.

(2) The Superintendent of Public Instruction shall notify the public and the media by September 30 of each year as to the availability of school district and school profiles at school district and Department of Education offices. The superintendent shall also include notice that copies of school district and school self-evaluations can be obtained from the school districts. [Formerly 326.765; 1995 c.660 s.12]

329.110 [Repealed by 1963 c.544 s.52]

329.115 Oregon Report Card. (1) Prior to September 30 of each year, the Superintendent of Public Instruction shall issue an Oregon Report Card on the state of the public schools and progress toward achieving the goals contained in ORS 329.025 and 329.035.

(2) The purpose of the Oregon Report Card is to monitor trends among school districts and Oregon's progress toward achieving the goals stated in this chapter. The report on the state of the public schools shall be designed to:

(a) Allow educators and local citizens to determine and share successful and unsuccessful school programs;

(b) Allow educators to sustain support for reforms demonstrated to be successful;

(c) Recognize schools for their progress and achievements; and

(d) Facilitate the use of educational resources and innovations in the most effective manner.

(3) The report shall contain, but need not be limited to:

(a) Demographic information on public school children in this state.

(b) Information pertaining to student achievement, including statewide assessment data, graduation rates and dropout rates, including progress toward achieving the education benchmarks established by the Oregon Progress Board, with arrangements by minority groupings where applicable.

(c) Information pertaining to special program offerings.

(d) Information pertaining to the characteristics of the school and school staff, including assignment of teachers, experience of staff and the proportion of minorities and women represented on the teaching and administrative staff.

(e) Budget information, including source and disposition of school district operating funds and salary data.

(f) Examples of exemplary programs, proven practices, programs designed to reduce costs or other innovations in education being developed by school districts in this state that show improved student learning.

(g) Such other information as the superintendent obtains under ORS 329.105.

(4) In the second and subsequent years that the report is issued, the report shall include a comparison between the current and previous data and an analysis of trends in public education. [Formerly 326.770; 1995 c.660 s.13]

329.120 [Repealed by 19[illegible] c.544 s.52]

(Parental and Community Participation)

329.125 Policy on parental and community participation. The Legislative Assembly recognizes that students in public elementary and secondary schools can best reach the levels of performance expected under the provisions of this chapter with parental and community participation in the education process. It is, therefore, recommended but not required that:

(1) School districts provide opportunities for parents or guardians to be involved in establishing and implementing educational goals and to participate in decision-making at the school site;

(2) Employers recognize the need for parents or guardians and members of the community to participate in the education process not only for their own children but for the educational system;

(3) Employers be encouraged to extend appropriate leave to parents or guardians to allow greater participation in that process during school hours; and

(4) School districts enter into partnerships with business, labor and other groups to provide workplace-based professional development opportunities for their educational staff. [Formerly 326.775; 1995 c.660 s.14]

329.130 [Repealed by 1963 c.544 s.52]

(Services for Children and Families)

329.145 Definitions for ORS 329.150 and 329.155. As used in ORS 329.150 and 329.155:

(1) "Families" means a group of individuals related by blood, marriage or adoption, or individuals whose functional relationships are similar to those found in such associations. The family's purpose is the security, support, nurturance, love, transmission of values and facilitation of each member's growth and development, and is the primary social unit affecting a child's well-being.

(2) "Services" means education and all other programs and services addressing one or more of a child's six basic needs as follows: stimulus, nutrition, health, safety, nurturance and shelter.

(3) "Young children" means children zero through eight years of age. [Formerly 326.785]

329.150 Services for children and families at school site; policy. A school district may provide services for children and families at the school site. If the district chooses to provide services, the design of educational and other services to children and their families shall be the responsibility of the school district. School districts may coordinate services with programs provided through the local commissions on children and families to provide services to families. To ensure that all educational and other services for young children and their families offer the maximum opportunity possible for the personal success of the child and family members, it is the policy of this state that the following principles for serving children should be observed to the maximum extent possible in all of its educational and other programs serving young children and their families:

(1) Services for young children and their families should be located as close to the child and the family's community as possible, encouraging community support and ownership of such services;

(2) Services for young children and their families should reflect the importance of integration and diversity to the maximum extent possible in regard to characteristics such as race, economics, gender, creed, capability and cultural differences;

(3) Services should be designed to support and strengthen the welfare of the child and the family and be planned in consideration of the individual family's values;

(4) Services should be designed to assure continuity of care among care givers in a given day and among service plans from year to year;

(5) Service systems should address the most urgent needs in a timely manner including health, intervention and support services; and

(6) Service providers and sources of support should be coordinated and collaborative, to reflect the knowledge that no single system can serve all of the needs of the child and family. [Formerly 326.790; 1995 c.660 s.15]

329.153 Policy on prevention and cost-effective programs and strategies. (1) It is the policy of the Legislative Assembly that programs and strategies that can substantiate a claim to prevention and cost-effectiveness be of high priority.

(2) The Legislative Assembly finds that dollars invested in quality programs, such as the Head Start program after

which the Oregon prekindergarten is modeled, return the costs thereof several times over in costs saved in the areas of remedial education, corrections and human services. [Formerly 336.005]

Note: 329.153 was added to and made a part of ORS chapter 329 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

329.155 Standards for programs providing services to children and families; interagency coordination. (1) Education and other programs providing services to children and families, as identified in ORS 417.315 (4), shall:

(a) Evaluate the effectiveness of the program as related to the principles stated in ORS 329.025 and 417.305 in the earliest stages of the budget process;

(b) Articulate ways in which the program is an effective component of agency and state priorities, goals and strategies, such as those developed by the Oregon Progress Board, or to relevant research and professional standards;

(c) Establish plans, interagency partnerships, implementation practices and interactions with local and private sectors;

(d) Utilize the information generated by applicable state advisory groups and by the local planning process administered by the State Commission on Children and Families in the program assessment of needs and decisions as to service delivery in a given community; and

(e) Identify barriers to improving program capability to serve the needs of young children and related recommendations, if any.

(2) The processes listed in subsection (1) of this section are for the purpose of generating interagency coordination so as to serve to the greatest extent possible young children and their families in a comprehensive and developmentally appropriate fashion. The information generated by these processes shall be considered as a contribution to subsequent budget decisions by state and local agencies, the Oregon Department of Administrative Services and Legislative Assembly, and as a contribution to the planning tasks of the State Commission on Children and Families and the coordinating tasks of the Oregon Coordinating Council for Children and Families. [Formerly 326.795]

(Early Childhood Education)

329.160 Policy on early childhood and parenting education; funding goals. It is the policy of this state to implement programs for early childhood education, for parenting education including instruction about prenatal care, for child-parent centers and for extended Oregon prekindergarten programs. By 1999, funding for programs shall be available for 50 percent of children eligible for Oregon prekindergarten programs, and, by 2004, full funding for programs shall be available for all eligible children. The Oregon prekindergarten program shall continue to be operated in coordination with the federal Head Start program in order to avoid duplication of services and so as to ensure maximum use of resources. The state shall continue funding Oregon prekindergarten programs with a goal to have full funding for all eligible children. [Formerly 326.810; 1995 c.660 s.17]

329.165 Development of long-range plan for serving children and families. (1) In consultation with the advisory committee for the Oregon prekindergarten program, the Department of Education and the Office of Community College Services shall develop a long-range plan for serving eligible children and their families and shall report to each regular session of the Legislative Assembly on the funds necessary to implement the long-range plan, including but not limited to regular programming costs, salary enhancements and program improvement grants. The department shall determine the rate of increase in funding for programs necessary each biennium to provide service to all children eligible for the prekindergarten program by 2004.

(2) The Department of Education and the Office of Community College Services shall include in their budget requests to the Governor funds sufficient to implement each two-year phase of the long-range plan.

(3) Each biennial report shall include but not be limited to estimates of the number of eligible children and families to be served, projected cost of programs and evaluation of the programs. [Formerly 326.813; 1995 c.660 s.18]

329.170 Definitions for ORS 329.170 to 329.200. As used in ORS 329.170 to 329.200:

(1) "Advisory committee" means the advisory committee established specifically for the two programs established by ORS 329.170 to 329.200.

(2) "Approved parent-as-teacher programs" means those programs which are recognized by the Department of Education as meeting the minimum program rules

adopted by the State Board of Education and provide information and support to parents in order to enhance their ability to foster their children's cognitive, social and physical development.

(3) "Oregon prekindergartens" means those programs which are recognized by the department as meeting the minimum program rules to be adopted by the State Board of Education and provide comprehensive health, education and social services in order to maximize the potential of children three and four years of age.

(4) "Oregon prekindergarten program" means the statewide administrative activities carried on within the Department of Education to allocate, award and monitor state funds appropriated to create or assist local Oregon prekindergartens.

(5) For purposes of ORS 329.175, "eligible child" means an at-risk child who is not a participant in a federal, state or local program providing like comprehensive services and may include children who are eligible under rules adopted by the State Board of Education. As used in this subsection, "at-risk child" means a child at least three years of age and not eligible for kindergarten whose family circumstances would qualify that child for eligibility under the federal Head Start program.

(6) For purposes of ORS 329.180, "eligible family" means any family with an at-risk child. As used in this subsection, "at-risk child" means a child between zero and eight years of age who is assessed by multiple criteria adopted by rule of the State Board of Education as likely to experience difficulty succeeding in school.

(7) "Department" means the Department of Education. [Formerly 326.600]

329.175 Department to administer prekindergarten program; grants; eligibility; coordination with other programs. (1) The Department of Education shall administer the Oregon prekindergarten program to assist eligible children with comprehensive services including educational, social, health and nutritional development to enhance their chances for success in school and life. Eligible children, upon request of parent or guardian, shall be admitted to approved Oregon prekindergartens to the extent that the Legislative Assembly provides funds.

(2) Nonsectarian organizations including school districts and Head Start grantees are eligible to compete for funds to establish an Oregon prekindergarten. Grant recipients shall serve children eligible according to federal Head Start guidelines and other children who meet criteria of eligibility adopted by rule by the State Board of Education. However, not more than 20 percent of the total enrollment shall consist of children who do not meet Head Start guidelines. School districts may contract with other governmental or nongovernmental non-sectarian organizations to conduct a portion of the program. Funds appropriated for the program shall be used to establish and maintain new or expanded Oregon prekindergartens and shall not be used to supplant federally supported Head Start programs. Oregon prekindergartens also may accept gifts, grants and other funds for the purposes of this section.

(3) Applicants shall identify how they will serve the target population and provide all components as specified in the federal Head Start performance standards and guidelines, including staff qualifications and training, facilities and equipment, transportation and fiscal management.

(4) Oregon prekindergartens shall coordinate with each other and with federal Head Start programs to insure efficient delivery of services and prevent overlap. They shall also work with local organizations such as local education associations serving young children and make the maximum use of local resources. [Formerly 326.605]

329.180 Program function; funding. (1) The Department of Education shall administer the state-supported parent-as-teacher program to help families more effectively foster their children's cognitive, social and physical development.

(2) Eligible families shall be admitted to the program to the extent that the Legislative Assembly provides funds. Families may be charged for services based on their ability to pay.

(3) Approved parent-as-teacher programs shall receive state-funded support through the department. School districts may subcontract with other governmental or nongovernmental nonsectarian organizations to conduct a portion of the state program. Persons applying to conduct the parent-as-teacher program shall identify targeted groups to be served, outreach methods to be used, program components and the qualifications of instructional and special staff. [Formerly 326.610]

329.183 Prekindergarten Program Trust Fund. (1) The Prekindergarten Program Trust Fund is established as a fund in the State Treasury, separate and distinct from the General Fund. Interest earned by the trust fund shall be credited to the trust fund. The primary purpose of the trust fund is to assist eligible children with comprehensive services including educational, social, health and nutritional development to enhance their chances for success in school and life. For this purpose, the trust fund is continuously appropriated for and shall be expended only for prekindergarten and parent-as-teacher programs described in ORS 329.170 to 329.200.

(2) The State Board of Education may solicit and accept money in the form of gifts, contributions and grants to be deposited in the trust fund. Except as provided in ORS 329.185, the acceptance of federal grants for purposes of ORS 329.170 to 329.200 does not commit state funds nor place an obligation upon the Legislative Assembly to continue the purposes for which the federal funds are made available.

(3) The trust fund may be listed, if otherwise qualified, on the Oregon income tax return for checkoff pursuant to application made to the Oregon Charitable Checkoff Commission under ORS 305.690 to 305.753 by the State Board of Education. [1995 c.636 s.4]

329.185 Eligibility for state funded prekindergarten programs. When the federal Head Start program provides funding for programs for eligible children at at least the 1990-1991 per child level, as described in ORS 329.170 (3), eligibility for state funded prekindergarten programs shall be expanded to include programs for children

whose family income exceeds the federal Head Start limits or who are in an underserved or unserved age category. After determining the increase in income limits or age level that would make children most in need of state programs eligible for them, the State Board of Education may direct expenditure of any unexpended or unobligated funds appropriated for the biennium for eligible children to be expended for the additional children considered to be most in need. In the following biennium, the State Board of Education shall include the cost of any added program for the children most in need in its biennial budget. [Formerly 326.815; 1995 c.660 s.19]

Note: 329.185 was added to and made a part of ORS chapter 329 by legislative action but was not added to 329.170 to 329.200. See Preface to Oregon Revised Statutes for further explanation.

329.190 Advisory committee. The Department of Education and the Office of Community College Services shall establish an advisory committee composed of interested parents and representatives from the State Commission on Children and Families, health care profession, early childhood education and development staff preparation programs, Oregon Head Start Association, school districts, community colleges, Early Intervention Council, child care and other organizations as considered necessary by the department and the Office of Community College Services to assist with the establishment of the approved Oregon prekindergarten and parent-as-teacher programs. [Formerly 326.615]

329.195 Rules; grant applications. (1) The State Board of Education shall adopt rules for the establishment of the

Oregon prekindergarten and parent-as-teacher programs. Rules specifically shall require the Oregon prekindergarten programs to provide for parental involvement and performance standards at a level no less than that provided under the federal Head Start program guidelines. Federal Head Start program guidelines shall be considered as guidelines for the Oregon prekindergarten program.

(2) In developing rules for the Oregon prekindergarten and parent-as-teacher programs, the board shall consult with the advisory committee and shall consider such factors as coordination with existing programs, the preparation necessary for instructors, qualifications of instructors, training of staff, adequate space and equipment and special transportation needs.

(3) The Department of Education and the Office of Community College Services shall review applications for both the Oregon prekindergarten and parent-as-teacher programs received and designate those programs eligible to commence operation by July 1 of each year. When approving grant applications, to the extent practicable, the State Board of Education shall distribute funds regionally based on percentages of unmet needs. [Formerly 326.620]

329.200 Report on program by state superintendent; department to assess program effectiveness. (1) The Superintendent of Public Instruction shall report to the Legislative Assembly on the merits of continuing and expanding the Oregon prekindergarten and parent-as-teacher programs or instituting other means of providing early childhood development assistance.

(2) The superintendent's report shall include specific recommendations on at least the following issues:

(a) The relationships of state-funded prekindergarten and parent-as-teacher programs with the common school system;

(b) The types of children and their needs that both programs should serve;

(c) The appropriate level of state support for implementing programs for all eligible children, including related projects to prepare instructors and provide facilities, equipment and transportation;

(d) The state administrative structure necessary to implement both programs; and

(e) Licensing or indorsement of early childhood teachers.

(3) The Department of Education, in consultation with the Office of Community College Services, shall examine, monitor and assess the effectiveness of Oregon prekindergarten and parent-as-teacher programs. The superintendent shall make biennial reports to the Legislative Assembly on the effectiveness of the programs. [Formerly 326.625]

329.210 [Repealed by 1953 c.306 s.18]

(Early Childhood Improvement Program)

329.215 Definitions for ORS 329.215 to 329.235. As used in ORS 329.215 to 329.235:

(1) "Approved program" means an early childhood education program approved by the Department of Education.

(2) "At-risk children" means children who may have difficulty achieving in school and who meet criteria established by the State Board of Education by rule.

(3) "Early childhood education" means educational programs that conform to the standards adopted by the State Board of Education by rule and that are designed for the education and training of children who are at least three years of age but have not passed their ninth birthday, and includes all special educational programs established and operated under this chapter.

(4) "Early Childhood Improvement Program" means those programs meeting the criteria included in ORS 329.237 and complying with rules adopted by the State Board of Education.

(5) "Extended day services" means programs that serve young children and operate during hours beyond regular school time. [Formerly 343.415]

329.220 [Repealed by 1953 c.306 s.18]

329.225 Operating guides for programs; approval of programs. (1) The Department of Education shall prepare operating guides for early childhood education programs applicable to programs under ORS 329.215 to 329.235 that are consistent with requirements imposed by the State Board of Education by rule for kindergarten through grade three.

(2) The Department of Education shall review applications for approval of early childhood education programs

and may approve those prekindergarten programs after considering:

(a) The educational adequacy and type of program.

(b) The number of children who will be served by the program.

(c) The availability of trained personnel and facilities.

(d) The need for the program in the applying district. [Formerly 343.425]

329.228 Early Childhood Education Trust Fund. (1) The Early Childhood Education Trust Fund is established as a fund in the State Treasury, separate and distinct from the General Fund. Interest earned by the trust fund shall be credited to the trust fund. The primary purpose of the trust fund is to assist public school districts in providing programs designed to improve educational services for children enrolled in kindergarten through grade three. For this purpose, the trust fund is continuously appropriated for and shall be expended only for programs described in ORS 329.215 to 329.235.

(2) The State Board of Education may solicit and accept money in the form of gifts, contributions and grants to be deposited in the trust fund. The acceptance of federal grants for purposes of ORS 329.215 to 329.235 does not commit state funds nor place an obligation upon the Legislative Assembly to continue the purposes for which the federal funds are made available.

(3) The trust fund may be listed, if otherwise qualified, on the Oregon income tax return for checkoff pursuant to application made to the Oregon Charitable Checkoff

Commission under ORS 305.690 to 305.753 by the State Board of Education. [1995 c.636 s.2]

329.230 [Repealed by 1953 c.306 s.18]

329.235 How district may provide early childhood education. Subject to the approval of the Superintendent of Public Instruction:

(1) The district school board of any school district in which there are resident children who are three years of age or older but who have not attained compulsory attendance age and who are not enrolled in a kindergarten of the district may:

(a) Provide early childhood education for such children as part of the district's educational program; or

(b) When the board considers a contract to be economically feasible and in the interests of the learning opportunities of eligible children, contract for instruction of such children in a school district operating an approved early childhood education program, subject to such reimbursement as the districts may agree.

(2) An education service district may operate an approved early childhood education program in the same manner as programs are provided under ORS 334.175 or 334.185. [Formerly 343.435]

329.237 Administration; program design; components. (1) The Department of Education shall administer the Early Childhood Improvement Program to assist public school districts in providing programs designed to improve educational services for children enrolled in kindergarten through grade three. Programs shall be based on research and proven successful practices.

(2) The programs shall include the following planned components:

(a) Targeted services for "at-risk" children that may be in cooperation with local commissions on children and families to provide services to families, which may include but are not limited to remedial and alternative academic programs, child care, parent participation and child development services.

(b) Efforts to improve the kindergarten through third grade curriculum and educational practices so that they:

(A) Are consistent with research findings on how children learn;

(B) Are sensitive to individual differences such as cultural background and learning styles; and

(C) Encourage parent participation. Such efforts may include but are not limited to adapting curricula and training administrators and other staff in early childhood education and child development.

(c) Comprehensive education, health care and social services for children to be provided through interagency agreements among school districts, health care and social service providers.

(d) Evaluation of programs by goals set by the district for the program.

(e) Planned transition from prekindergarten programs to kindergarten through grade three.

(3) In addition to the components listed in subsection (4) of this section, Early Childhood Improvement Programs may include but are not limited to the following components:

(a) Extended day services for school age children who need care or enrichment opportunities; and

(b) Programs designed to improve the adult to child ratios in kindergarten through grade three.

(4) The district application shall include:

(a) Plans developed by 21st Century Schools Councils at the school building level as described in ORS 329.704; and

(b) Demonstrated consistency with the local assessments and plans resulting from ORS 417.705 to 417.790 and 419A.170.

(5) Funds shall be available to districts with approved applications on a per child basis for the district's children enrolled in kindergarten through grade three. Funds not allocated shall be prorated to the districts with approved applications not later than the end of the fiscal year for which the allocation is made.

(6) If the district plan proposes use of innovative instructional materials, the State Board of Education, pursuant to ORS 337.050, may waive the use of such instructional materials as might otherwise have been required. [Formerly 336.435; 1995 c.660 s.20]

Note: Legislative Counsel has substituted "ORS 417.705 to 417.790 and 419A.170" for the words "this 1993 Act" in 329.237 as amended by section 52, chapter 676, Oregon

Laws 1993. Other specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1993 Comparative Section Table located in Volume 15 of ORS.

329.240 [Repealed by 1953 c.306 s.18]

329.245 Rules; applications. (1) The State Board of Education shall adopt rules for the establishment of the Early Childhood Improvement Program. Rules shall require school districts to include in their applications cooperative efforts with other programs for young children.

(2) The Department of Education shall review and approve applications by July 1 of each year. [Formerly 336.437]

329.250 [Repealed by 1953 c.306 s.18]

(Child Development

and Student-Parent Programs)

329.255 Child development specialist's services required. (1) The district school board of every school district operating any elementary schools may make the services of a child development specialist available to the pupils enrolled in the elementary schools and their families.

(2) A child development specialist shall provide primary prevention services directly or in cooperation with others in settings in addition to the school setting:

(a) To pupils enrolled in the elementary school, with priority given at the primary level, including kindergarten, to assist them in developing positive attitudes

toward themselves and others in relation to life career roles and to ensure that appropriate assessment and screening procedures that recognize academic and individual differences are provided for the early identification of talents and strengths on which to base a positive learning experience for each child.

(b) To the professional staff of the elementary school to assist them in early identification of pupils enrolled therein with learning or developmental problems.

(c) To parents of pupils enrolled in elementary schools to assist them in understanding their children's unique aptitudes and needs and to aid in relating home, school and neighborhood experiences.

(d) To refer pupils enrolled in the elementary school and their families to appropriate state or local agencies for additional assistance as needed.

(e) To coordinate resources available through the community and the school.

(3) The district school board of every school district operating any elementary schools may make the services of a child development specialist, as described in subsection (2) of this section available to children four years of age or younger and their families residing in its district. If such children need assessment, the child development specialist shall ensure that appropriate assessment and screening procedures that recognize academic and individual differences are provided for early identification of barriers or needs that prevent successful transition to early education programs.

(4) School districts may provide the services authorized or required under this section by contract with qualified state or local programs. [Formerly 343.125; 1995 c.660 s.21]

329.260 [Repealed by 1953 c.306 s.18]

329.265 State reimbursement for costs. (1) Following the close of each fiscal quarter for which reimbursement is claimed, any district making the services of a child development specialist available pursuant to ORS 329.255 in a state approved program shall file a verified claim with the Superintendent of Public Instruction for the reimbursement as designated in the notice of allotment for the costs incurred by the district in providing the services of the child development specialist.

(2) If the Superintendent of Public Instruction approves the application for reimbursement, the superintendent shall cause the district to be reimbursed in the amount claimed in accordance with the state approved program provided in subsection (1) of this section. In no case shall the state reimbursement from funds available for the child development specialist program exceed 75 percent of the approved annual cost of the program nor shall the state's expenditure exceed the amount appropriated by the Legislative Assembly for this purpose. [Formerly 343.135]

329.275 State board guidelines; qualification for child development specialist.

(1) The State Board of Education by rule shall establish guidelines for implementation of ORS 329.255 and 329.265, including but not limited to qualifications for

child development specialists and procedures for community coordination of efforts. Such qualifications and procedures shall not be limited to traditional treatment oriented disciplines or the various disciplines requiring certification.

(2) Exceptions to the qualifications established by the state board may be made if the state board determines after a hearing that an individual is capable of performing the required functions. [Formerly 343.145]

329.280 [Repealed by 1953 c.306 s.18]

329.290 [Repealed by 1953 c.306 s.18]

329.300 [Repealed by 1953 c.306 s.18]

329.310 [Repealed by 1953 c.306 s.18]

329.320 [Repealed by 1953 c.306 s.18]

329.330 [Repealed by 1953 c.306 s.18]

329.350 [Repealed by 1953 c.306 s.18]

329.360 [Repealed by 1953 c.306 s.18]

329.385 Child development programs; student-parent programs; grants. (1) The Department of Education shall prepare operating guides for child development programs and for student-parent programs applicable to programs under ORS 315.234, 318.031 and this section that are consistent with requirements imposed by the State Board of Education.

(2) The Department of Education shall review applications for approval of child development programs and student-parent programs and may approve up to 20 child

development and up to 20 student-parent programs after considering:

(a) The educational adequacy and type of programs.

(b) The number of students and children who are to be served by the program.

(c) The availability of trained personnel and facilities.

(d) The need for the programs in the applying district.

(3) In approving applications for child development programs, the department shall require that the school district use the contributions described in ORS 315.234 and 318.031 for child development curriculum and in the formulation and initiation of on-site child development centers. Each center must be able to accommodate not more than 30 full-time equivalent spaces for children, distributed according to needs of the community.

(4) In approving applications for student-parent programs, the department shall require that the school district use the contributions described in ORS 315.234 and 318.031 for appropriate education for student-parents leading to graduation and in the formulation and development of appropriate on-site child care facilities. Each facility must be able to accommodate not more than 30 full-time equivalent spaces for children, distributed according to the needs of the student-parents.

(5) As used in this section:

(a) "Child development program" means an educational program that conforms to standards adopted by the State Board of Education and that consists of an education component and a child care component.

(b) "Student-parent program" means an educational program that conforms to standards adopted by the State Board of Education and that consists of education for the student-parent and child care for the student-parent's child. [Formerly 336.850; 1995 c.278 s.38]

329.390 [Repealed by 1953 c.306 s.18]

329.395 Definitions for ORS 329.395 to 329.425. As used in ORS 329.395 to 329.425:

(1) "Child development program" means an educational program funded by ORS 329.395 to 329.425 that conforms to standards adopted by the State Board of Education and that consists of an education component and a child care component.

(2) "Teenage parent program" means an educational program funded by ORS 329.395 to 329.425 that conforms to standards adopted by the State Board of Education and that consists of education for the student-parent and child care for the student-parent's child. [Formerly 336.870; 1995 c.278 s.39]

329.400 [Repealed by 1953 c.306 s.18]

329.405 Study of existing program. The Department of Education shall study the child development program and the teenage parent program at Churchill High School in Eugene and other programs that provide services of a similar nature to determine how these programs could be replicated in other high schools. [Formerly 336.875]

329.415 Grant procedures for ORS 329.395 to 329.425. (1) The Department of Education shall prepare operating guides for child development programs and for teenage parent programs applicable to programs under ORS

329.395 to 329.425 that are consistent with requirements imposed by the State Board of Education.

(2) The Department of Education shall review applications for approval of child development programs and teenage parent programs and may approve those programs after considering:

(a) The educational adequacy and type of programs.

(b) The number of students and children who are to be served by the program.

(c) The availability of trained personnel and facilities.

(d) The need for the programs in the applying district.

(3) In approving applications for child development programs, the department shall require that the school district use its grant for child development curriculum and in the formulation and initiation of on-site child development centers. Each center must be able to accommodate from 15 to 30 full-time equivalent spaces for children, distributed according to needs of the community.

(4) In approving applications for teenage parent programs, the department shall require that the school district use the grant in connection with appropriate education for teenage parents leading to graduation and in the formulation and development of appropriate on-site child care centers. Each center must be able to accommodate from 15 to 30 full-time equivalent spaces for children, distributed according to the needs of the teenage student-parents.

(5) Results of the study required by ORS 329.405 shall be used as a basis for school district planning. [Formerly 336.880]

329.420 [Repealed by 1953 c.306 s.18]

329.425 Grants under ORS 329.395 to 329.425. (1) An approved school district child development program shall be entitled to receive a grant not to exceed $50,000.

(2) An approved school district teenage parent program shall be entitled to receive a grant not to exceed $25,000.

(3) A district may receive grants under both subsections (1) and (2) of this section but no district is entitled to receive more than $75,000 for the grant period. [Formerly 336.885]

329.430 [Repealed by 1953 c.306 s.18]

329.440 [Repealed by 1953 c.306 s.18](Diplomas; Certificates of Mastery)

329.445 Recognition of needs of middle educational levels. The Department of Education shall review district improvement plans to ensure that the school restructuring efforts framed in this chapter address the unique learning and developmental needs of the middle educational levels between the early childhood education and Certificate of Initial Mastery levels detailed in this chapter. [Formerly 326.730; 1995 c.660 s.22]

329.447 Diploma; certificates; career indorsements. School districts shall continue to issue diplomas to students as evidence that students have completed their public school education. At or before grade 12, a diploma shall be conferred upon all students completing the

requirements established by the State Board of Education and the school districts. In addition to the diploma, the following shall be available:

(1) A certificate, to be conferred upon students who with additional services and accommodations do not meet the Certificate of Initial Mastery standards.

(2) Certificate of Initial Mastery, to be conferred upon all students meeting state and local standards and requirements required for the Certificate of Initial Mastery pursuant to ORS 329.465.

(3) Certificate of Advanced Mastery, to be conferred upon all students meeting state and local standards and requirements for the Certificate of Advanced Mastery in one of the areas pursuant to ORS 329.475.

(4) Career indorsements, which are focus areas that identify a high quality career related course of study which informs students about future choices and simultaneously prepares them for further education, lifelong learning and employment. [1995 c.660 s.25]

329.450 [Repealed by 1953 c.306 s.18]

329.455 [Formerly 335.125; repealed by 1995 c.660 s.50]

329.460 [Repealed by 1953 c.306 s.18]

329.465 Certificate of Initial Mastery. (1) By the end of the 1995-1996 school year, the State Board of Education shall revise and adopt standards and requirements for the Certificate of Initial Mastery and design a plan that enables school districts to phase in academic standards so that students have opportunities to obtain a Certificate of

Initial Mastery by no later than the 1998-1999 school year, in the manner designated in the state board's plan.

(2) The State Board of Education shall prescribe the standards, pursuant to ORS 329.025 and 329.035, that a student must meet in order to obtain a Certificate of Initial Mastery. The Certificate of Initial Mastery shall be based on a series of performance-based assessments and content assessments benchmarked to mastery levels at approximately grades 3, 5, 8 and 10. The assessment methods shall include work samples and tests and may include portfolios. The state board shall establish a certificate for students who, with additional services and accommodations, do not meet the Certificate of Initial Mastery standards. Students shall be allowed to collect credentials over a period of years, culminating in a project or exhibition that demonstrates attainment of the required knowledge and skills that have been measured by a variety of valid assessment methods.

(3) Requirements for the Certificate of Initial Mastery shall:

(a) Ensure that students have the necessary knowledge and demonstrate the skills to read, write, problem solve, reason and communicate;

(b) Ensure that students have the opportunity to demonstrate the ability to learn, think, retrieve information and use technology;

(c) Ensure that students have the opportunity to demonstrate that they can work effectively as individuals and as an individual in group settings; and

(d) Ensure that student assessment is based on academic content standards in mathematics, science, history, geography, economics, civics, English, second languages and the arts.

(4) Prior to July 1, 1997, school districts shall submit plans to the Department of Education setting forth the steps the district will take to ensure that its programs meet the requirements necessary for students to obtain a Certificate of Initial Mastery. Each district's plan shall demonstrate how alternative learning program options will be available for students working toward a Certificate of Initial Mastery and a diploma.

(5) The provisions of this section may be applied individually as appropriate to students enrolled in special education programs under ORS chapter 343.

(6) The Department of Education shall develop procedures to accommodate out-of-state students, students taught by a parent or private teachers pursuant to ORS 339.035, private school students transferring into public schools and migrant children from other states and countries.

(7) Nothing in this section is intended to apply the Certificates of Mastery programs or standards to private school students or students taught by a parent or private teachers pursuant to ORS 339.035. [Formerly 335.140; 1995 c.660 s.23]

329.467 Submission of Certificate of Initial Mastery materials. The State Board of Education shall submit Certificate of Initial Mastery standards, requirements and

plans for implementation to the legislative interim committees on education for input and direction before administrative rules for the Certificate of Initial Mastery are adopted. [1995 c.660 s.24a]

329.470 [Repealed by 1953 c.306 s.18]

329.475 Certificate of Advanced Mastery with indorsements. (1) After the State Board of Education adopts standards and rules for the Certificate of Advanced Mastery, each school district shall institute programs that allow students to qualify for a Certificate of Advanced Mastery with indorsements that prepare students for post-secondary academic pursuits and professional technical careers.

(2) School districts may implement the programs in a public education institution such as a public school, education service district, community college, public professional technical school or institution of higher education, or any combination thereof, that enrolls the student and meets the requirements of the State Board of Education.

(3) The programs must provide a combination of work-related learning experiences and study in accordance with ORS 329.855. The program shall include a comprehensive educational component that meets rigorous academic standards.

(4) All courses necessary for a Certificate of Advanced Mastery shall be available to all students.

(5) The State Board of Education shall adopt a framework for the Certificate of Advanced Mastery programs and timelines for implementation of the programs for the school districts to follow as resources become available to

the school districts. The Department of Education may provide technical assistance to assist school districts in the implementation of the Certificate of Advanced Mastery programs.

(6) In establishing the requirements for Certificates of Advanced Mastery with indorsements, the State Board of Education shall adopt rules that facilitate movement among the indorsements and shall encourage public school choice and mobility so as to enhance a student's opportunities for a full range of educational experiences.

(7) The public education institution shall be reimbursed for the student's tuition by the district in which the student resides pursuant to ORS 339.115 and rules of the State Board of Education, in an amount not to exceed the student's tuition or the amount the district receives for the student from state funds, whichever is less. A school district shall not receive state funds for the student in an amount that exceeds the student's tuition. Any adult who wishes to pursue an indorsement, or any student having earned the Certificate of Advanced Mastery or a diploma or who has attained 19 years of age and who wishes to continue a program, may do so by paying tuition. As used in this section, "public education institution" does not include a public school to which a student has transferred under ORS 329.485.

(8) Programs developed under this section shall meet the highest academic standards possible and provide students with opportunities for a broad range of quality work-related learning experiences.

(9) A high school diploma issued by a private or out-of-state secondary school as signifying successful completion of grade 12 shall be considered equivalent to a high school diploma issued by an Oregon public school. [Formerly 335.150; 1995 c.660 s.28; 1995 c.769 s.1; 1997 c.353 s.1]

Note: Sections 27 and 43, chapter 660, Oregon Laws 1995, provide:

Sec. 27. Submission of standards and rules for Certificate of Advanced Mastery; implementation by school districts; incentive programs. (1) Prior to March 1, 1999, the Department of Education shall submit standards and rules for the Certificate of Advanced Mastery adopted by the State Board of Education pursuant to ORS 329.475 to the Legislative Assembly.

(2) Pursuant to the standards and rules adopted by the State Board of Education, each school district prior to September 1, 2004, shall institute programs that allow students to qualify for the Certificate of Advanced Mastery. However, a school district shall not be required to award any Certificate of Advanced Mastery prior to September 1, 2004.

(3) The Department of Education shall establish incentive programs to encourage school districts to implement the Certificate of Advanced Mastery prior to September 1, 2004. The incentive programs shall provide a variety of models for implementation of the Certificate of Advanced Mastery in school districts that vary in size and location in the state. The incentive programs shall also provide a variety of models for career indorsement areas.

(4) Notwithstanding subsection (2) of this section, school districts shall demonstrate continued progress toward development and implementation of the Certificate of Advanced Mastery prior to statewide implementation. [1995 c.660 s.27; 1997 c.353 s.2]

Sec. 43. Report on implementation of Certificate of Advanced Mastery. (1) Prior to March 1, 1999, the State Board of Education shall submit the Certificate of Advanced Mastery standards, evaluation criteria and plans for implementation to the legislative interim committees on education or the Legislative Assembly for input and direction before administrative rules for the Certificate of Advanced Mastery are adopted.

(2) The State Board of Education shall submit a report to the Seventieth Legislative Assembly that includes:

(a) A Certificate of Advanced Mastery implementation timeline and projected cost;

(b) An evaluation of assessment strategies and staff development opportunities;

(c) Strategies for implementation of the Certificate of Advanced Mastery in small and rural schools;

(d) A description of systems developed to monitor the academic standards accomplished by Certificate of Advanced Mastery students as well as student attainment in work and post-secondary study;

(e) A description of the role of business and education partnerships; and

(f) A description of the implementation of the six broad career indorsement areas of study. [1995 c.660 s.43; 1997 c.353 s.3]

329.480 [Repealed by 1953 c.306 s.18]

329.485 Statewide assessment system; types of assessments; subjects; additional services or alternative educational options. (1)(a) The Department of Education shall implement statewide a valid and reliable assessment system for all students that meets technical adequacy standards. The assessment system, to be completed by the year 2000, shall include criterion-referenced assessments including performance-based assessments, content-based assessments, as those terms are defined in ORS 329.075, and other valid methods to measure the academic content standards and to identify students who meet or exceed the standards for each mastery level leading to the Certificate of Initial Mastery and the Certificate of Advanced Mastery. However, until this plan is operational, assessment shall continue at grades 3, 5, 8 and 10.

(b) The Department of Education shall develop the statewide assessment system in:

(A) Mathematics, to be implemented by the 1995-1996 school year.

(B) English, to be implemented by the 1996-1997 school year.

(C) Science, to be implemented by the 1997-1998 school year.

(D) History, geography, economics and civics, to be implemented by the 1998-1999 school year.

(2) Prior to full statewide implementation of the assessment system pursuant to subsection (1) of this section, the State Board of Education by rule shall establish criteria for determining whether students have demonstrated the knowledge and skills necessary to perform successfully at each level in the manner described in ORS 329.465, 329.475 and 329.855.

(3) Each year the resident district shall be accountable for determining the student's progress toward achieving the standards at grades 3, 5, 8 and 10. Progress toward the standards shall be measured in a manner that clearly enables the student and parents to know whether the student is making progress toward meeting or exceeding the standards at grades 3, 5, 8 and 10. In addition, the district shall adopt a grading system based on the local school district board adopted course content of the district's curriculum. The grading system shall clearly enable the student and parents to know how well the student is achieving course requirements.

(4) If a student has not met or has exceeded all of the standards at grades 3, 5, 8 and 10, the school district shall make additional services or alternative educational or public school options available to the student.

(5) If the student to whom additional services or alternative educational options have been made available does not meet or exceed the standards within one year, the school district, with the consent of the parents, shall make an appropriate placement, which may include an alternative education program or the transfer of the student to another public school in the district or to a public

school in another district that agrees to accept the student. The district that receives the student shall be entitled to payment. The payment shall consist of:

(a) An amount equal to the district expenses from its local revenues for each student in average daily membership, payable by the resident district in the same year; and

(b) Any state and federal funds the attending district is entitled to receive payable as provided in ORS 339.133 (2). [Formerly 335.160; 1995 c.660 s.29]

329.487 Second language instruction and proficiency. (1) In the 21st century, all Oregonians should be able to communicate in a second language. School districts shall make available to all students the opportunity to achieve this goal.

(2) Prior to the end of the 2001-2002 school year, all students who have completed grade 12 shall have completed a minimum of two years of second language instruction and shall demonstrate a level of proficiency in a second language as determined by the school district board.

(3) Each school district board shall determine the method of implementation of the second language requirement under subsection (2) of this section. Individual students may be granted a waiver of the second language requirement under subsection (2) of this section based on criteria established by the school district board. [1995 c.660 s.26]

329.489 American Sign Language; proficiency; curricula development; teachers.

(1) Within the State of Oregon's kindergarten through grade 12 education system, proficiency for students in American Sign Language shall be in accordance with rules adopted by the State Board of Education pursuant to ORS chapter 329 and any other applicable state or federal law.

(2) The State Board of Education is encouraged to continue to:

(a) Coordinate with the State Board of Higher Education and the Oregon State School for the Deaf to develop curricula for American Sign Language courses;

(b) Implement programs to locate and prepare qualified teachers and interpreters of American Sign Language; and

(c) Assist public high schools in identifying local and regional needs and resources available for American Sign Language courses. [1995 c.687 s.1]

Note: 329.489 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 329 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

329.490 [Repealed by 1953 c.306 s.18]

329.495 [Formerly 335.170; repealed by 1995 c.660 s.50]

329.500 [Repealed by 1953 c.306 s.18]

329.505 [Formerly 335.180; repealed by 1995 c.660 s.50]

329.510 [Repealed by 1953 c.306 s.18]

329.520 [Repealed by 1953 c.306 s.18]

329.530 [Repealed by 1953 c.306 s.18]

329.535 [Formerly 336.530; repealed by 1995 c.660 s.50]

OREGON 21st CENTURY

SCHOOLS PROGRAM

329.537 Funding from State School Fund for Oregon 21st Century Schools Program and School Improvement and Professional Development program. (1) There is a high priority given to the Oregon 21st Century Schools Program under ORS 329.537 to 329.605 and the School Improvement and Professional Development program under ORS 329.675 to 329.745. Therefore, in addition to other funds available for the purposes of the Oregon 21st Century Schools Program and the School Improvement and Professional Development program, as funds become available, an additional amount may be allocated by the Legislative Assembly for the purposes of these programs. The amount shall be distributed to eligible school districts at the same time and in the same manner as the State School Fund is distributed. The amount distributed to any eligible school district depends on the amount approved in the school district's application.

(2) The decision to distribute funds under this section shall be made by the State Board of Education on advice of the Oregon 21st Century Schools Advisory Committee. [1991 c.693 s.13; 1995 c.660 s.49]

329.540 [Repealed by 1953 c.306 s.18]

329.545 Policy for program. The Legislative Assembly finds that:

(1) Because American society and the American student are changing dramatically, schools and schooling must be altered significantly in order to sustain their relevance and their vitality in an increasingly challenging world;

(2) Real and fundamental change in the structure of schools and education must emerge from the school site rather than be imposed externally or unilaterally and should be based on professional knowledge and a solid foundation of research;

(3) To encourage the restructuring of schools in Oregon, the state should establish a process to allow teachers, administrators and the public to modify or waive, or both, certain statutes, rules and local policies and agreements in order to promote greater flexibility in the way schools are organized, managed and financed; and

(4) In exchange for such flexibility, teachers, administrators and the public should be held accountable to clear and measurable standards of student learning and other educational performance. [Formerly 336.535]

329.555 Oregon 21st Century Schools Program established; purposes. (1) There is established a program to be known as the "Oregon 21st Century Schools Program."

(2) The purposes of this program include the following:

(a) To encourage the restructuring of school operations and formal relationships among teachers, administrators, other school personnel and local citizens for purposes of improving student achievement, including but not limited to modifications of the following:

(A) The length and structure of the school day and the school year;

(B) Curriculum requirements;

(C) Graduation requirements;

(D) The licensing, assignment and formal responsibilities of teachers, administrators and other school personnel;

(E) State statutes and rules and local policies and agreements relating to educational practices, with the exception of those that affect health, safety or constitutional rights under state or federal law;

(F) The formal and informal relationships between school districts and other entities, including community colleges, four-year colleges and universities, businesses and other institutions; and

(G) The integration of traditional services to kindergarten through grade 12 with public and privately sponsored services, such as early childhood education, child care and assistance for teenage parents and other at-risk youth.

(b) To encourage educators, school districts and local citizens to establish measurable goals for educational attainment and increased expectations for student performance, including but not limited to improvement in such performance measures as:

(A) Student dropout rates;

(B) District, state and national standardized tests and other assessments of student learning and educational progress;

(C) The extent and nature of parental involvement in school activities;

(D) Student conduct and disciplinary actions;

(E) Student expectations and attitudes towards learning; and

(F) Student success in college, professional and other post-secondary programs. [Formerly 336.540; 1995 c.278 s.40; 1995 c.343 s.28; 1995 c.660 s.31]

329.560 [Repealed by 1953 c.306 s.18]

329.565 District eligibility for program. (1) Any district school board is eligible to submit an application for the Oregon 21st Century Schools Program.

(2) Applications may be made on behalf of the following:

(a) An individual school building;

(b) Two or more school buildings within a district;

(c) All school buildings within a district; or

(d) A consortium consisting of two or more school districts. [Formerly 336.545]

329.570 Application; district planning committee; eligibility. (1) To the extent practicable, the development of the application and the administration of programs under ORS 329.537 to 329.605 shall be delegated by the state and school districts to the 21st Century Schools Councils.

(2) If more than one school building is part of an application, the 21st Century Schools Councils may elect to establish a district planning committee to facilitate the development of its application. A district planning committee shall consist of:

(a) Administrators and at least one school board member to be chosen by the school board.

(b) Teachers, chosen by the exclusive representative, in a number equal to those appointed under paragraph (a) of this subsection.

(c) At least three public members, chosen jointly by the other members of the committee.

(3) To participate in the Oregon 21st Century Schools Program, and prior to submission of an application by the school board, a school district shall have accomplished the following:

(a) Identified the school building or buildings and, if appropriate, the school district or districts on whose behalf the application is submitted.

(b) Established, in each school building affected by the proposal, a 21st Century Schools Council.

(c) Agreed, at the direction of the 21st Century Schools Councils and, if applicable, the district planning committee, upon the following:

(A) The major activities to be carried out as part of the project, including but not limited to the nature and extent of the restructuring of school operations and formal relationships as described in ORS 329.555 (2).

(B) The specified measures of student learning and achievement, including but not limited to those described in ORS 329.555 (2) for each building affected by the application.

(C) The process by which each 21st Century Schools Council and, where applicable, the district planning committee will collect data and assess the progress and final performance of its program.

(4) The local district school board shall be responsible for submitting the application and certifying that all appropriate requirements of ORS 329.537 to 329.605 have been met. [Formerly 336.550; 1995 c.660 s.32]

329.575 Application content. (1) All applications for the Oregon 21st Century Schools Program shall be submitted to the Department of Education, and shall contain the following:

(a) A letter of support from the school board and the exclusive representative of teachers in the buildings affected if waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613 or 342.650 is required.

(b) An abstract of the nature and objectives of the project and a description of the changes projected to occur in the school or district, or any combination thereof, as a result of the proposal.

(c) A description of the goals and major activities to be carried out as part of the project, including but not limited to the nature and extent of the restructuring of school operations and formal relationships as described in ORS 329.555 (2). The application shall also describe the process used to identify the goals and major activities of the project.

(d) A list of the major student learning and educational outcomes that are projected to occur as a result of the project, including but not limited to those outcomes described in ORS 329.555 (2).

(e) A description of all statutes and rules to be modified or waived to complete the activities of the project. For each provision, the application shall include a statement describing why the modification or waiver is warranted.

(f) A description of all district rules and agreements that are to be modified or waived. All such provisions shall be approved by a majority vote of each 21st Century Schools Council, the affirmative vote of at least two-thirds of the licensed teachers in the affected school buildings and the approval of the local district school board and the exclusive representative of the teachers if waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613 or 342.650 is required.

(g) A budget plan for the project and additional anticipated sources of funding, if any, including private grants and contributions.

(h) A description of the process by which data will be collected and assessed to measure student learning and other educational performance attributable to the project.

(i) Letters expressing support and a willingness to participate from community colleges and other post-secondary institutions, where appropriate.

(j) The number of school years for which approval is sought. The period shall be no less than three years and no more than five years.

(k) A description of how the district intends to share and disseminate to other school districts those practices that prove effective.

(2) Applications shall contain all the components of subsection (1) of this section to be eligible for approval.

(3) The application may also contain written statements of support from parents, citizens, local businesses and other interested individuals and organizations. [Formerly 336.555; 1997 c.864 s.20]

329.585 District proposals. (1) In addition to the application described in ORS 329.575 for the Oregon 21st Century Schools Program or ORS 329.695 for the School Improvement and Professional Development program, a school district may submit proposals to:

(a) Modify laws, rules or policies; and

(b) Implement district or school improvement plans.

(2) A district that applies under this section shall submit a proposal in accordance with rules adopted by the State Board of Education. When more than one school building is part of an application, the board may require a demonstration in the application process of coordination among such school buildings.

(3) A proposal submitted under this section shall be approved by the school district board and by the exclusive representatives of the teachers in the district if

waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613 or 342.650 is required. [Formerly 336.557; 1995 c.660 s.33; 1997 c.864 s.21]

329.595 Rules on applications; review of applications; recommendations to state board. (1) The Oregon 21st Century Schools Advisory Committee, appointed by the State Board of Education under ORS 329.700, shall propose rules, for adoption by the state board, to govern the submission and approval of applications under ORS 329.537 to 329.605.

(2) The advisory committee shall review all applications submitted under ORS 329.537 to 329.605 and recommend applications for approval by the state board including but not limited to the following criteria:

(a) The existence of significant, measurable and achievable goals based on student performance;

(b) The extent to which the district has demonstrated the need for the requested modifications and waiver of specified statutes and rules and local policies and agreements;

(c) The extent to which the application proposes significant changes in the structure of school operations and the formal relationships between teachers, administrators, other school personnel and public citizens, as described in ORS 329.555;

(d) The clarity of purpose and values underlying the proposal;

(e) Evidence of thoroughness in identifying, developing and projecting implementation of the proposed activities;

(f) Evidence of potential transferability of the proposed activities and practices that are judged to be successful;

(g) A determination that modification or waiver of statutes and rules and local policies and agreements will not be detrimental to the health, safety or constitutional rights of students, teachers, administrators, other school personnel or the public under state or federal law; and

(h) A demonstration of support and commitment from all parties to support and faithfully implement the proposal.

(3) The advisory committee may suggest modifications in submitted applications, subject to the approval of the school board, the exclusive representative of teachers if waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613 or 342.650 is required, and each 21st Century Schools Council involved in the project.

(4) The state board shall consider the recommendations of the advisory committee and make the final decisions on approval of the applications, using the criteria contained in subsection (2) of this section. Before making these decisions, the state board shall allow opportunity for comment by persons submitting the applications and by the public. [Formerly 336.560; 1997 c.864 s.22]

329.600 District annual report; proposed plan amendment. (1) Each district that receives approval for a project

under the Oregon 21st Century Schools Program shall submit an annual report to the advisory committee appointed under ORS 329.700 and to the local community. The report shall include specific data that reflect the nature and extent of changes in student learning and other performance as described in its application.

(2) Along with its annual report, a district may submit proposed amendments to its approved program describing additional statutes, rules or local policies and agreements that it proposes to waive. Such amendments must be accompanied by a statement of support from the local school board, the exclusive representative of teachers if waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613 or 342.650 is required, and each 21st Century Schools Council involved in the project. The advisory committee may recommend approval of such amendments upon a finding of satisfactory progress by the district and a determination that all other provisions of ORS 329.537 to 329.605 have been met.

(3) If, based upon these annual reports, the advisory committee determines that a district's progress is unsatisfactory, the advisory committee may recommend to the State Board of Education that the district be placed on probation for a one-year period. During the probationary year, the district shall be eligible for special assistance from the Department of Education. During the probationary year, the district shall also prepare a contingency plan in the event it is ordered to terminate its project prematurely.

(4) If, after the probationary period described in subsection (3) of this section, the district's progress is still unsatisfactory in the judgment of the advisory committee, the advisory committee may recommend that the state board terminate the project and implement its plan for returning to compliance with previously waived statutes, rules and local policies and agreements.

(5) A district may terminate its application by submitting to the board a request for termination that has been approved by the school board, the exclusive representative of teachers if waiver of a collective bargaining obligation over mandatory subjects of collective bargaining, a right or obligation under a collective bargaining contract or any right under ORS 243.650 to 243.782, 342.513, 342.545, 342.553, 342.608, 342.610, 342.613 or 342.650 is required, and the 21st Century Schools Councils. [Formerly 336.565; 1997 c.864 s.23]

329.605 Department oversight function. The Department of Education shall be responsible for oversight in the implementation of approved projects. In carrying out this oversight function, the department shall:

(1) Maintain regular contact with educators, school building personnel and school district personnel through site visitations, reports and other appropriate contacts.

(2) Develop and coordinate linkages between participating school districts and other educational institutions, including community colleges, four-year colleges and universities.

(3) Regularly collect relevant information from participating educators, school building personnel and district personnel. [Formerly 336.570]

329.610 [Repealed by 1963 c.22 s.2]

329.620 [Repealed by 1963 c.22 s.2]

329.630 [Repealed by 1963 c.22 s.2]

329.640 [Repealed by 1963 c.22 s.2]

329.650 [Repealed by 1963 c.22 s.2]

329.660 [Repealed by 1963 c.22 s.2]

329.670 [Repealed by 1963 c.22 s.2]

SCHOOL IMPROVEMENT AND PROFESSIONAL DEVELOPMENT PROGRAM

(Generally)

329.675 Definitions for ORS 329.675 to 329.745 and 329.790 to 329.820. As used in ORS 329.675 to 329.745 and 329.790 to 329.820:

(1) "Beginning teacher" means a teacher who:

(a) Possesses a teaching license issued by the Teacher Standards and Practices Commission;

(b) Is employed at least half time, primarily as a classroom teacher, by a school district; and

(c) Has taught fewer than 90 consecutive days, or 180 days total, as a licensed teacher in any public, private or state-operated school.

(2) "Educational goals" means a set of goals for educational performance, as formulated by the 21st Century

Schools Councils and local communities, and adopted by district school boards, according to provisions of ORS 329.675 to 329.745 and 329.790 to 329.820, to encourage greater accountability between schools and the community, and better to assess the effectiveness of educational programs, including the professional growth and career opportunity programs, described in ORS 329.675 to 329.745 and 329.790 to 329.820.

(3) "Index of teaching and learning conditions" means the system for the collection and analysis of relevant educational data by schools, districts and the state for the purpose of assessing the educational effectiveness of schools and programs.

(4) "Mentor teacher" means a teacher who:

(a) Possesses a basic or standard teaching, personnel service or administrative license issued by the Teacher Standards and Practices Commission;

(b) Is employed at the time of selection under contract primarily as a classroom teacher by a school district in this state;

(c) Has successfully taught for three or more years as a licensed teacher in any public school;

(d) Has been selected and trained as described in ORS 329.815; and

(e) Has demonstrated mastery of teaching skills and subject matter knowledge.

(5) "Support program" means a program provided by a mentor teacher to a beginning teacher that includes, but

is not limited to, direct classroom observation and consultation, assistance in instructional planning and preparation, support in implementation and delivery of classroom instruction, and other assistance intended to enhance the professional performance and development of the beginning teacher. [Formerly 336.705; 1995 c.660 s.34; 1997 c.249 s.95]

Note: The amendments to 329.675 by section 7, chapter 383, Oregon Laws 1997, become operative January 15, 1999. See section 16, chapter 383, Oregon Laws 1997. The text that is operative on and after January 15, 1999, is set forth for the user's convenience.

329.675. As used in ORS 329.675 to 329.745 and 329.790 to 329.820:

(1) "Beginning teacher" means a teacher who:

(a) Possesses a teaching license issued by the Teacher Standards and Practices Commission;

(b) Is employed at least half time, primarily as a classroom teacher, by a school district; and

(c) Has taught fewer than 90 consecutive days, or 180 days total, as a licensed teacher in any public, private or state-operated school.

(2) "Educational goals" means a set of goals for educational performance, as formulated by the 21st Century Schools Councils and local communities, and adopted by district school boards, according to provisions of ORS 329.675 to 329.745 and 329.790 to 329.820, to encourage greater accountability between schools and the community, and better to assess the effectiveness of educational programs, including the professional growth and career

opportunity programs, described in ORS 329.675 to 329.745 and 329.790 to 329.820.

(3) "Index of teaching and learning conditions" means the system for the collection and analysis of relevant educational data by schools, districts and the state for the purpose of assessing the educational effectiveness of schools and programs.

(4) "Mentor teacher" means a teacher who:

(a) Possesses a teaching, personnel service or administrative license issued by the Teacher Standards and Practices Commission;

(b) Is employed at the time of selection under contract primarily as a classroom teacher by a school district in this state;

(c) Has successfully taught for three or more years as a licensed teacher in any public school;

(d) Has been selected and trained as described in ORS 329.815; and

(e) Has demonstrated mastery of teaching skills and subject matter knowledge.

(5) "Support program" means a program provided by a mentor teacher to a beginning teacher that includes, but is not limited to, direct classroom observation and consultation, assistance in instructional planning and preparation, support in implementation and delivery of classroom instruction, and other assistance intended to enhance the professional performance and development of the beginning teacher.

329.680 [Repealed by 1963 c.22 s.2]

329.685 Policy on school goals. (1) Further initiatives to promote educational excellence in the public schools are of vital importance in increasing student learning and strengthening Oregon's economy.

(2) The state should encourage and assist local school districts in their efforts to establish school goals through a process that involves educators and members of the community and to develop effective tools to measure progress against those goals that will increase the public accountability of educational programs.

(3) New career opportunities for professional development are desirable to recognize and reward those teachers who have demonstrated mastery of teaching skills, knowledge of their subject matter and other appropriate indicators of professional growth.

(4) The establishment of 21st Century Schools Councils for the school district and for individual schools is desirable to encourage new initiatives in school-based management and the assessment of educational progress, to provide new and expanded career opportunities for teachers and to facilitate efforts to restructure the school workplace to provide educators with greater responsibility while increasing their accountability. [Formerly 336.710]

(School Improvement and Professional Development)

329.690 School Improvement and Professional Development program established. (1) Oregon hereby establishes a School Improvement and Professional Development program to encourage the following:

(a) The development of educational goals for individual schools and school districts;

(b) The assessment of the educational progress of school programs and students;

(c) The expansion of professional growth and career opportunities for Oregon teachers;

(d) The restructuring of the school workplace to provide teachers with responsibilities and authority commensurate with their status as professionals;

(e) The development and coordination of pilot programs to evaluate the viability of proposed rules, policies or recommendations that affect professional practices associated with teaching methods, curricula, instructional materials, instructional format and organization, assessment and testing related to this chapter; and

(f) The identification of validated educational research used to substantiate the rationale for initiating pilot programs.

(2) All programs in ORS 329.675 to 329.745 and 329.790 to 329.820 are subject to the availability of funds appropriated therefor. [Formerly 336.715; 1995 c.660 s.35]

329.695 Grant applications; evaluation; duration of grant; representation in selection. (1) The School Improvement and Professional Development program shall be administered by the Department of Education according to rules established pursuant to ORS 329.675 to 329.745 and 329.790 to 329.820 by the State Board of Education.

(2) A school district or an education service district, or a combination of such entities, may submit an application to the Department of Education to receive a School Improvement and Professional Development grant.

(3) The Department of Education shall be responsible for evaluating district proposals according to rules and criteria established by the State Board of Education.

(4) Grants under this program shall be effective for one or two calendar years and are renewable. A district may apply to continue its grant for one or two years but in no event is the district entitled to receive more than $1,000 for each teacher for whom a grant is received during the continuation period.

(5) In awarding grants, the Department of Education shall work to insure a representation of school districts of different sizes and in different geographical locations. [Formerly 336.720]

329.700 Oregon 21st Century Schools Advisory Committee; membership; application deadlines for grants; amount; distribution. (1) The State Board of Education shall appoint an Oregon 21st Century Schools Advisory Committee to propose rules for the submission and approval of grants and programs, including but not limited to rules for the Oregon 21st Century Schools Program under ORS 329.537 to 329.605, the School Improvement and Professional Development program under ORS 329.675 to 329.745 and the beginning teacher support program under ORS 329.790 to 329.820.

(2)(a) The advisory committee shall include teachers, who shall constitute a majority of the 15 members, and

one member from each of the following groups, at least one of whom must be a member of a minority:

(A) School administrators;

(B) School board members;

(C) Education school faculty;

(D) Classified district employees;

(E) Parents of children currently in prekindergarten through grade 12 of the public school system; and

(F) Members of the business and labor community.

(b) The board may appoint other citizens as considered appropriate by the board.

(3) The deadline for applications submitted by districts for the School Improvement and Professional Development program under ORS 329.675 to 329.745 and the beginning teacher support program under ORS 329.790 to 329.820 shall be April 1 preceding the school year for which they are proposed. The Department of Education shall review all applications and shall approve or reject them no later than June 1 preceding the school year for which they are proposed.

(4) Districts that qualify for 21st Century Schools grants under ORS 329.537 to 329.605, School Improvement and Professional Development program grants under ORS 329.675 to 329.745 and beginning teacher support program grants under ORS 329.790 to 329.820 shall receive up to $1,000 per year for every full-time equivalent teacher deemed eligible for this program.

(5) Subject to ORS 291.232 to 291.260, the Superintendent of Public Instruction shall distribute grants-in-aid to eligible school districts so that at least three-quarters of the allocation due to each eligible district is received no later than February 1 of each fiscal year and the remainder when all required reports are filed with the Department of Education. If underpayments or overpayments result, adjustments shall be made in the following year. [Formerly 336.730; 1995 c.660 s.36]

329.704 Local 21st Century Schools Councils; duties; composition; selection; district site committees. (1) Nothing in this section shall interfere with the duties, responsibilities and rights of duly elected school district boards. There shall be established at each school a 21st Century Schools Council. The duties of a 21st Century Schools Council shall include but not be limited to:

(a) The development of plans to improve the professional growth of the school's staff;

(b) The improvement of the school's instructional program;

(c) The development and coordination of plans for the implementation of programs under this chapter at the school; and

(d) The administration of grants-in-aid for the professional development of teachers and classified district employees.

(2) A 21st Century Schools Council shall be composed of teachers, parents, classified employees and principals or the principal's designee, as follows:

(a) Not more than half of the members shall be teachers;

(b) Not more than half of the members shall be parents of students attending that school;

(c) At least one member shall be a classified employee; and

(d) One member shall be the principal of the building or the principal's designee.

(3) In addition, other members may be as the school district shall designate, including but not limited to local school committee members, business leaders, students and members of the community at large.

(4) Members of a 21st Century Schools Council shall be selected as follows:

(a) Teachers shall be licensed teachers elected by licensed teachers at the school site;

(b) Classified employees shall be elected by classified employees at the school site;

(c) Parents shall be selected by parents of students attending the school; and

(d) Other representatives shall be selected by the council.

(5) If a school district board determines that a school site is unable to fulfill the requirements of this section or if the needs of a school site require a different composition, the school district board shall establish the 21st Century Schools Council in a manner that best meets the educational needs of the district.

(6) All 21st Century Schools Council meetings shall be subject to the open meetings law pursuant to ORS 192.610 to 192.690.

(7) A school district may establish a district site committee to assist in the administration of grants or in the district-wide coordination of programs. [1995 c.660 s.39 (enacted in lieu of 329.705)]

329.705 [Formerly 336.745; repealed by 1995 c.660 s.38 (329.704 enacted in lieu of 329.705)]

329.709 Rules for grant applications. (1) An eligible grant application must be submitted by a school district according to rules prescribed by the State Board of Education. The rules shall include, but not be limited to, the following:

(a) Except for state-operated schools, the school district in its application shall certify that its proposal has been approved by the school board and is consistent with existing district policies, rules and contracts bargained under ORS 243.650 to 243.782.

(b) The administration of grant programs under ORS 329.675 to 329.745 and 329.790 to 329.820 shall be consistent with existing district policies, rules and contracts bargained under ORS 243.650 to 243.782.

(2) Nothing in this section is intended to make grants under ORS 329.675 to 329.745 and 329.790 to 329.820 subject to collective bargaining. [Formerly 336.755]

329.710 [Amended by 1961 c.522 s.1; 1963 c.282 s.10; 1963 c.544 s.23; renumbered 330.080]

329.715 Application content. To be eligible for funding, a district's application shall include the following:

(1) A description of a process to formulate and adopt district and individual school building educational goals so that such goals reflect input from a wide range of citizens in the community.

(2) A description of how the district will formulate and use indexes of teaching and learning conditions to measure progress according to those goals. The indexes of teaching and learning conditions may include, but are not limited to, such indicators as:

(a) Class size and teaching loads;

(b) A profile of the teaching and administrative personnel, including such characteristics as years of experience, rate of turnover and absenteeism;

(c) The frequency and nature of teacher misassignments;

(d) The socioeconomic status of the community;

(e) The ability and willingness of a school district to provide financial support for the schools;

(f) Measures of student progress as measured on school district or state assessments, or both;

(g) Attendance and drop out rates;

(h) Student conduct and disciplinary actions;

(i) Measures of student success in professional, college and other post-secondary programs; and

(j) Student expectations and attitudes toward learning.

(3) A description of how the proposed program will address the identified needs for professional growth and career opportunities of teachers in the district.

(4) Certification by the school district that none of the moneys received through ORS 329.675 to 329.745 and 329.790 to 329.820 shall be used to replace expenditures for existing programs for professional growth and career opportunities.

(5) A description of how the district will evaluate the effectiveness of its School Improvement and Professional Development grant, using educational goals and an index of teaching and learning conditions. [Formerly 336.765; 1995 c.343 s.29]

329.720 [Amended by 1961 c.522 s.2; 1963 c.544 s.24; renumbered 330.085]

329.725 Professional growth and career opportunities; eligibility; grants; application. (1) To be eligible for funding, a district proposal shall define and provide a process by which eligible teachers are selected by a 21st Century Schools Council to receive additional professional growth and career opportunities which may include, but are not limited to, service as a mentor teacher, supervision and instruction of student teachers, either in the classroom or as an adjunct faculty member at a school of education, curriculum development, service on a 21st Century Schools Council, reimbursement for academic course work, opportunities for research in a teacher's field or fields, programs to encourage peer observation and assistance programs, additional sabbaticals and other programs designed to encourage professional growth.

(2) All teachers in good standing shall be eligible for advanced professional growth and career opportunities, according to criteria established by 21st Century Schools Councils. Those criteria shall include demonstration of the following:

(a) Mastery of teaching skills and subject matter knowledge;

(b) A commitment to personal and professional growth as a teacher;

(c) Active collaboration on professional matters with other faculty; and

(d) Active involvement in school and community affairs.

(3) In applying for such opportunities, teachers shall describe how such opportunities will further the goals of the schools in which the teachers are employed.

(4) Administrators may be eligible for additional professional growth and career opportunities, provided that their proposals are directly linked to enhancing their role as instructional leaders within their schools.

(5) Grants for professional growth and career opportunities may be given for a period of time not to exceed one year.

(6) A teacher approved for a professional growth and career opportunity shall be given the choice of receiving additional release time or additional compensation in exchange for assuming additional responsibilities. However, release time shall not be used if to do so increases

the work load of other teachers regularly employed by the school district. [Formerly 336.775]

329.730 [Amended by 1957 c.310 s.6; 1959 c.518 s.1; 1961 c.522 s.3; repealed by 1963 c.282 s.16]

329.735 Evaluation of district programs. (1) The Department of Education shall be responsible for conducting a comprehensive evaluation of all district programs under ORS 329.675 to 329.745 and 329.790 to 329.820 and reporting to the Legislative Assembly.

(2) The evaluations shall include an assessment of the performance of district programs as measured against those requirements outlined in ORS 329.715. [Formerly 336.780]

329.740 [Renumbered 330.115]

329.745 Dedication of available funds for professional development centers. To administer ORS 329.675 to 329.745, the Department of Education shall dedicate a portion of its funds, not to exceed 10 percent of the total appropriated for the purposes of ORS 329.675 to 329.745 to provide for the establishment of professional development centers to:

(1) Assist school districts, teachers, 21st Century Schools Council members and others to formulate goals and indexes of teaching and learning conditions;

(2) Provide additional professional growth and career opportunities for teachers; and

(3) Carry out other purposes of ORS 329.675 to 329.745. [Formerly 336.785]

329.750 [Renumbered 330.125]

329.753 [Formerly 342.017; repealed by 1995 c.660 s.50]

329.755 [1955 c.22 s.1; 1957 c.89 s.3; renumbered 330.135]

(Teacher Corps)

329.757 Oregon Teacher Corps. (1) There is hereby created an Oregon Teacher Corps program to encourage the entry of certain qualified persons into the teaching profession through the use of forgivable student loans for those who complete three years of successful teaching in a public school in this state.

(2) All programs in ORS 329.757 to 329.780 are subject to the availability of funds appropriated therefor. [Formerly 348.120]

329.760 [Amended by 1953 c.538 s.2; renumbered 330.145]

329.765 Administration of corps. (1) The State Scholarship Commission shall administer the Oregon Teacher Corps program insofar as practicable in the same manner as the loan program under ORS 348.050 is administered and make rules for the selection of qualified applicants.

(2) Eligibility for the Oregon Teacher Corps is limited to those prospective teachers whom the State Scholarship Commission determines to have graduated, or currently rank, in the top 20 percent of their high school or college class. The commission shall assess each applicant's potential for teaching through such means as essays written by the applicant, letters of recommendations from teachers and others, descriptions of relevant teaching experiences, and other appropriate measures. Allowance shall be

given for those applicants whom the commission determines to be in at least one of the following categories:

(a) Minority individuals as defined in ORS 200.005;

(b) Prospective teachers in scarce indorsement areas, as defined by the Teacher Standards and Practices Commission; or

(c) Prospective teachers who agree to teach in remote and difficult to serve school districts in this state.

(3) Recipients of loans under ORS 329.757 to 329.780 shall be enrolled at least half time in an approved teacher education program at an Oregon institution of higher education. [Formerly 348.125]

329.770 [Amended by 1953 c.513 s.3; renumbered 330.155]

329.775 Loans; amounts; interest; repayment; waiver of repayment. (1) Upon approval of the loan application of an eligible student by the State Scholarship Commission, the commission may loan an amount from the Oregon Teacher Corps Account to the student in compliance with this section. The loan shall be evidenced by a written obligation but no additional security shall be required. Notwithstanding any provision in this section, the commission may require cosigners on the loans.

(2) Loans granted under this section to eligible students by the commission shall:

(a) Not exceed $2,000 in a single academic year to an undergraduate student enrolled in a teacher education program leading to a basic license.

(b) Not exceed $4,000 in a single academic year to a graduate student enrolled in a teacher education program leading to a basic license.

(c) Not exceed $8,000 for all loans made to a student under this section.

(3) Borrowers are required to pay at least seven percent interest per annum on the unpaid balance from the date of the loan as provided in subsection (4) of this section.

(4)(a) Repayment of the principal and accruing and deferred interest on loans shall be commenced not later than 12 months after the student's completion of the teacher education program or other termination of the student's education. Repayment of loans under ORS 329.765 shall be delayed for the period of time the student is teaching at least half time in a public school in this state but becomes payable under the usual terms if the student ceases teaching before completing three full years. Repayment of loans shall be delayed up to three years upon application of the borrower showing inability to locate suitable employment.

(b) Repayment shall be completed in a maximum of 120 months from the time repayment is commenced. However, nothing in this section is intended to prevent repayment without penalty at an earlier date than provided in this section or to prohibit the commission from extending the repayment period to a date other than permitted by this subsection.

(5)(a) An eligible student who receives a loan under this section, preparing to be an elementary or secondary

school teacher in this state, is not required to repay a loan made under this section if the student completes:

(A) At least three years of equivalent full-time teaching in a public elementary or secondary school within the five-year period following completion of the teacher education program in this state; or

(B) At least three years of teaching under a full-time contract working at least three-fourths time in classroom teaching and no more than one-fourth time not in classroom teaching duties during regular school hours in a public elementary or secondary school within the five-year period following completion of the teacher education program in this state, as approved by the State Scholarship Commission upon written request of the borrower.

(b) Repayment of remaining principal and interest shall be waived upon the death or total and permanent disability of the borrower. [Formerly 348.130]

Note: The amendments to 329.775 by section 8, chapter 383, Oregon Laws 1997, become operative January 15, 1999. See section 16, chapter 383, Oregon Laws 1997. The text that is operative on and after January 15, 1999, is set forth for the user's convenience.

329.775. (1) Upon approval of the loan application of an eligible student by the State Scholarship Commission, the commission may loan an amount from the Oregon Teacher Corps Account to the student in compliance with this section. The loan shall be evidenced by a written obligation but no additional security shall be required.

Notwithstanding any provision in this section, the commission may require cosigners on the loans.

(2) Loans granted under this section to eligible students by the commission shall:

(a) Not exceed $2,000 in a single academic year to an undergraduate student enrolled in a teacher education program leading to a basic or initial license.

(b) Not exceed $4,000 in a single academic year to a graduate student enrolled in a teacher education program leading to a basic or initial license.

(c) Not exceed $8,000 for all loans made to a student under this section.

(3) Borrowers are required to pay at least seven percent interest per annum on the unpaid balance from the date of the loan as provided in subsection (4) of this section.

(4)(a) Repayment of the principal and accruing and deferred interest on loans shall be commenced not later than 12 months after the student's completion of the teacher education program or other termination of the student's education. Repayment of loans under ORS 329.765 shall be delayed for the period of time the student is teaching at least half time in a public school in this state but becomes payable under the usual terms if the student ceases teaching before completing three full years. Repayment of loans shall be delayed up to three years upon application of the borrower showing inability to locate suitable employment.

(b) Repayment shall be completed in a maximum of 120 months from the time repayment is commenced. However, nothing in this section is intended to prevent repayment without penalty at an earlier date than provided in this section or to prohibit the commission from extending the repayment period to a date other than permitted by this subsection.

(5)(a) An eligible student who receives a loan under this section, preparing to be an elementary or secondary school teacher in this state, is not required to repay a loan made under this section if the student completes:

(A) At least three years of equivalent full-time teaching in a public elementary or secondary school within the five-year period following completion of the teacher education program in this state; or

(B) At least three years of teaching under a full-time contract working at least three-fourths time in classroom teaching and no more than one-fourth time not in classroom teaching duties during regular school hours in a public elementary or secondary school within the five-year period following completion of the teacher education program in this state, as approved by the State Scholarship Commission upon written request of the borrower.

(b) Repayment of remaining principal and interest shall be waived upon the death or total and permanent disability of the borrower.

329.780 Oregon Teacher Corps Account; use. (1) There is established in the State Treasury separate from the General Fund an account to be known as the Oregon

Teacher Corps Account into which shall be deposited all repayments of loans with interest to the State Scholarship Commission pursuant to ORS 329.775. Any interest accruing to the account shall be credited thereto.

(2) Amounts in the account established under subsection (1) of this section are continuously appropriated to the State Scholarship Commission for the purposes of ORS 329.757 to 329.780 and the need grant program under ORS 348.260. [Formerly 348.135; 1997 c.28 s.1]

(Beginning Teacher Support Program; Mentor Teachers)

329.790 Findings on teacher support programs. The Legislative Assembly finds that:

(1) The quality of teaching in the public schools is of vital importance to the future of this state;

(2) This state has a special interest in insuring that the induction of beginning teachers into their profession is conducive to their professional growth and development; and

(3) The formal assignment of mentor teachers who have demonstrated mastery of teaching skills and subject matter knowledge should substantially improve the induction and professional growth of beginning teachers in this state, as well as provide mentor teachers with additional and valuable opportunities to enhance their own professional growth. [Formerly 342.784]

329.795 Beginning teacher support program established; district participation; use of grants. (1) The State Board of Education shall establish a beginning teacher support program to provide eligible beginning teachers

in this state with a continued and sustained support program from a formally assigned mentor teacher.

(2) Any district is eligible to participate in the beginning teacher support program.

(3) Two or more districts may operate jointly a beginning teacher support program if they meet all the requirements of ORS 329.790 to 329.820.

(4) Educational consortia established for approved teacher education programs pursuant to rules of the Teacher Standards and Practices Commission are eligible to operate a beginning teacher support program to serve beginning teachers in a participating school district if:

(a) All moneys received as grants-in-aid for the beginning teacher support program are administered by the participating school district to provide direct services to beginning teachers; and

(b) All other requirements of ORS 329.790 to 329.820 are met.

(5) To the extent practicable, school districts may coordinate with institutions of higher education in the design, implementation and evaluation of mentorship programs.

(6) All programs in ORS 329.790 to 329.820 are subject to the availability of funds appropriated therefor. [Formerly 342.786]

329.800 Application; content. (1) Each district that wishes to participate in the beginning teacher support program shall submit a formal application to the Department of Education no later than October 1 of each school year,

according to rules of the State Board of Education. By that date, districts shall inform the department of:

(a) The names of all eligible beginning teachers employed by the district and a description of their teaching assignments and extracurricular duties;

(b) The names of mentor teachers selected by a district and a description of their teaching assignments and the indorsement area in which they are licensed to teach;

(c) A description of the content and calendar of the proposed beginning teacher support program. The program must provide a minimum of 90 hours of direct contact between mentor teachers and beginning teachers, including observation of or assistance with classroom teaching, or both, during the school day; and

(d) A description of the amount and nature of each eligible beginning teacher's classroom and extracurricular duties and assurance that these duties are not unreasonable for a beginning teacher.

(2) The district shall certify in the application that no eligible beginning teacher is or may be misassigned outside the teacher's indorsement area, except as provided in rules of the Teacher Standards and Practices Commission. [Formerly 342.788]

329.805 Grants-in-aid; amount; distribution. (1) Subject to ORS 291.232 to 291.260, the Superintendent of Public Instruction shall distribute grants-in-aid to eligible districts to offset the costs of beginning teacher support programs. A qualifying district shall receive annually $3,000 for each full-time equivalent beginning teacher approved for support.

(2) The Superintendent of Public Instruction shall distribute at least three-fourths of the allocation due to each eligible district no later than February 1 of each fiscal year and the remainder when all required final reports are filed with the Department of Education. If underpayments or overpayments result, adjustments shall be made in the following year.

(3) If the funds are insufficient for all eligible proposals, the department shall award grants on a competitive basis taking into consideration school district size and geographic location.

(4) Notwithstanding ORS 329.800(1)(a), if a participating district hires a beginning teacher after its program has been approved, the district shall be eligible to receive, for each beginning teacher in addition to those named in the application, a per teacher grant-in-aid that is prorated to the remaining length of the school year, if all other requirements of ORS 329.790 to 329.820 are met, and if funds are available.

(5) The State Board of Education may adopt such rules as it considers appropriate for the distribution of grants-in-aid under this section.

(6) A district that is determined by the Department of Education to be in violation of one or more of the requirements of ORS 329.790 to 329.820 may be required to refund all grants-in-aid moneys distributed under ORS 329.790 to 329.820. The amount of penalty shall be determined by the State Board of Education. [Formerly 342.790]

329.810 Workshops for mentor and beginning teachers. After consulting with representatives of teachers, administrators, school boards, schools of education, the Teaching Research Division of the State System of Higher Education and such others as it considers appropriate, the Department of Education shall develop or approve workshops to provide training for mentor teachers and beginning teachers in programs eligible for grants-in-aid under ORS 329.790 to 329.820. [Formerly 342.792]

329.815 Mentor teachers; selection; stipend; effect on other teachers. The selection, nature and extent of duties of mentor teachers shall be determined by the school district. The following guidelines shall apply:

(1) No teacher shall be designated as a mentor teacher unless willing to perform in that role;

(2) No mentor teacher shall participate in the evaluation of beginning teachers for purposes of actions taken under ORS 342.805 to 342.937;

(3) Each mentor teacher shall complete successfully a training workshop provided or approved by the Department of Education while participating in the beginning teacher support program;

(4) The stipend received for each beginning teacher may be used by the district to compensate teachers who act as mentor teachers in addition to their regular duties or to compensate other individuals assigned duties to provide release time for teachers acting as mentor teachers; and

(5) If a mentor teacher receives additional release time to support a beginning teacher, it is expected that the total workload of other teachers regularly employed by

the school district should not increase in any substantial manner. [Formerly 342.794]

329.820 Evaluation of programs. The Department of Education shall be responsible for the regular and ongoing evaluation of programs under ORS 329.790 to 329.820 and may contract for such evaluation. The evaluation shall include, but not be limited to, assessments of the following:

(1) A survey and follow-up of all eligible mentor teachers and beginning teachers and appropriate district officials, to assess satisfaction with and the effectiveness of the beginning teacher support program;

(2) The amount and quality of the contact time between mentor teachers and beginning teachers;

(3) The effectiveness of workshops and other training required under ORS 329.790 to 329.820;

(4) The effectiveness of the mentor program in enhancing the professional development and retention of new teachers in the district;

(5) The desirability of extending this assistance program to students participating in graduate level teacher preparation programs similar to those which have been proposed by the Department of Higher Education; and

(6) The desirability of extending this assistance program to all probationary teachers. [Formerly 342.796]

(Successful Schools Program)

329.825 Policy on successful and innovative schools. It shall be the policy of the State of Oregon to promote and

encourage successful and innovative schools. Success shall be determined by establishing standards of improvement in student learning and measuring each school's performance in meeting those standards. Schools that meet those standards will be rewarded with additional tools to further improve student learning. [1997 c.864 s.1]

Note: 329.825 and 329.830 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 329 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

329.830 Establishment; application; incentive rewards. (1) The State Board of Education shall establish a system of determining successful schools and dispensing appropriate incentive rewards to those schools. The system shall be based on a school being the measurement unit to determine success. School success shall be determined by measuring a school's improvement over a specific assessment period. The successful schools program shall be voluntary.

(2) A school may submit an application to the Department of Education for the successful schools program. The application shall include a short statement from the school requesting consideration for the successful schools program. The application shall also include a copy of the school improvement plan implemented pursuant to ORS 329.095.

(3) A school may not amend its application after the application is submitted without approval by the state board. A school that has submitted an application may

not submit a new application until the assessment period has ended, unless the school withdraws the previous application.

(4) The department shall distribute incentive rewards to schools that are determined to be successful schools. The board shall establish criteria for determining successful schools. The criteria shall include, but not be limited to:

(a) The results from the statewide assessment system developed pursuant to ORS 329.485;

(b) The achievement of measurable academic goals from school improvement plans; and

(c) Other criteria relating to improvement in student learning.

(5) The department shall base the amount of the reward to each successful school on the number of teachers employed by the school. The minimum reward for each full-time teacher shall be $1,000. Part-time teachers shall receive a percentage of the reward based on the amount of time the part-time teacher worked. Teachers hired during the assessment period shall receive a percentage of the reward based on the length of time the teacher worked at the school during the assessment period.

(6) Each teacher shall individually decide how to use the reward. A reward shall be used by a teacher for classroom enhancements or professional development. As used in this subsection, "classroom enhancements" means items and activities that will improve student learning, including, but not limited to, books, instructional materials, multimedia equipment and software, supplies and field trips.

(7) The State Board of Education shall adopt any rules necessary to implement the successful schools program. [1997 c.864 s.2]

Note: See note under 329.825.

Note: Section 3, chapter 864, Oregon Laws 1997, provides:

Sec. 3. Report on implementation of successful schools program. Prior to October 1, 1998, the Department of Education shall report on the implementation of sections 1 and 2 of this Act [329.825 and 329.830] to the appropriate legislative interim committees on education. The report shall include:

(1) The rules adopted by the State Board of Education to implement the successful schools program;

(2) A recommendation on the source of funding for the successful schools program; and

(3) A recommendation on the amount of funding required for the successful schools program. [1997 c.864 s.3]

MISCELLANEOUS

329.850 Duties of Education and Workforce Policy Advisor under chapter. (1) The Education and Workforce Policy Advisor, in consultation with the Department of Education, the Office of Community College Services, the Bureau of Labor and Industries, the Economic Development Department and the Department of Human Resources, shall propose policies and strategies consistent with this chapter.

(2) The Education and Workforce Policy Advisor's policies and strategies must take into account that:

(a) The state must promote innovative thinking with respect to the curriculum and educational delivery system of Oregon public schools;

(b) The state must require of all youth a level of achievement that prepares them to pursue college, professional technical programs, apprenticeships, work-based training and school-to-work programs;

(c) Greater employer investment is essential in the ongoing training of all workers to meet workforce needs;

(d) The state must encourage Oregon businesses to improve productivity by creating high performance work organizations that provide high skills and high wage opportunities for youth and adults; and

(e) All employment-related training, education and job placement services and sources of funds must be coordinated among state agencies and boards and must complement the state's overall efforts on behalf of youth and adults. [Formerly 326.830; 1997 c.652 s.22]

329.855 Development of comprehensive education and training programs for indorsements and degrees; career related studies. (1) The Department of Education, the Office of Community College Services and the State System of Higher Education in consultation with the Education and Workforce Policy Advisor shall develop comprehensive education and training programs in accordance with ORS 329.475 for two-year to six-year academic professional technical indorsements, associate degrees and baccalaureate degrees.

(2) There may be established a process for industrial certification and a sequence of advanced certification that could be obtained throughout a person's career.

(3) Work groups, including teachers, community members and representatives of business and labor, may be appointed to offer specialized information concerning knowledge and skill requirements for occupations.

(4) No fewer than six broad career categories shall be identified, with additional categories added in future years. The education and training curriculum and achievement standards for each occupation and trade selected for students to achieve indorsements, associate degrees or baccalaureate degrees in the occupational categories selected shall be developed and available for school districts, community colleges and other training sites.

(5) In addition to academic content, the curriculum developed for indorsements, associate degrees and baccalaureate degrees shall ensure that every student has the option of a high quality career related course of study that provides the student with experience in and understanding of future career choices. Career related studies shall include a structured series of real or simulated activities that in combination with rigorous academic studies shall simultaneously prepare students for further education, lifelong learning and employment. These activities shall include but not be limited to:

(a) Job shadowing;

(b) Workplace mentoring;

(c) Workplace simulations;

(d) School based enterprises;

(e) Structured work experiences;

(f) Cooperative work and study programs;

(g) On-the-job training;

(h) Apprenticeship programs; or

(i) Other school-to-work opportunities.

(6) In considering where a student can most effectively and economically obtain the knowledge and skills required for the indorsement or post-secondary study, the Education and Workforce Policy Advisor may recommend integrating 2 + 2 Programs, the Job Training Partnership Act program, apprenticeship programs and any other state or federal job training program.

(7) Until full statewide implementation, school districts are encouraged to use Certificate of Advanced Mastery programs that are currently being developed, but modified, if necessary, to best fit their students' and community's needs. [Formerly 326.835; 1995 c.660 s.42; 1997 c.652 s.23]

329.860 Alternative learning options; Learning Centers; scope of services; outreach. (1) The Department of Education in consultation with the Office of Community College Services and the Education and Workforce Policy Advisor shall develop models for school districts of alternative learning options that may include Learning Centers designed to assist students who have left school in obtaining the Certificate of Initial Mastery through the use of teaching strategies, technology and curricula that emphasize the latest research and best practice.

(2) The Learning Centers may also provide for the integration of existing local and community programs that provide any part of the services needed to assist individuals in obtaining the Certificate of Initial Mastery.

(3) The centers may promote means of identifying, coordinating and integrating existing resources and may include:

(a) Child care services during school hours;

(b) After-school child care;

(c) Parental training;

(d) Parent and child education;

(e) English as a second language or bilingual services for limited proficiency students;

(f) Health services or referral to health services;

(g) Housing assistance;

(h) Employment counseling, training and placement;

(i) Summer and part-time job development;

(j) Drug and alcohol abuse counseling; and

(k) Family crisis and mental health counseling.

(4) Education service districts, school districts or schools, or any combination thereof, may contact any eligible elementary or secondary school student and the student's family if the student has ceased to attend school to encourage the student's enrollment in an education program that may include alternative learning options. If the student or the family cannot be located, the name and

last-known address shall be reported to the school nearest the address. The school shall attempt to determine if that student or family is being provided services by this state and shall seek to assist the student or family in any appropriate manner. [Formerly 336.157; 1995 c.278 s.41; 1995 c.660 s.44; 1997 c.652 s.24]

329.875 District eligibility to receive funds under chapter. (1) Public school districts or consortia of such districts with education service districts are eligible to receive funds under this chapter.

(2) The Department of Education shall evaluate the programs that receive grants under this chapter and report the results of the evaluation to the Legislative Assembly in the manner prescribed in ORS 192.245. [1993 c.45 s.94a]

329.885 School-to-work transitions and work experience programs; funding; eligibility for grants. (1) It is the policy of the State of Oregon to encourage educational institutions and businesses to develop, in partnership, models for programs related to school-to-work transitions and work experience internships directed by the Oregon Educational Act for the 21st Century as described in ORS 329.005 to 329.165, 329.185, 329.445, 329.850 and 329.855.

(2) From funds available, the Department of Education may allocate to any educational service district, school district, individual secondary school or community college grants to develop programs such as those described in subsection (1) of this section.

(3) To receive a grant to operate a program described in subsection (1) of this section, a business shall demonstrate to the satisfaction of the department that the program shall:

(a) Identify groups that have been traditionally underrepresented in the programs and internships, particularly in health care, business and high technology employme positions.

(b) Encourage students who belong to groups identified in paragraph (a) of this subsection, particularly students in secondary schools and community colleges, to apply for consideration and acceptance into a model program described in subsection (1) of this section.

(c) Promote an awareness of career opportunities in the school-to-work transition and the work experience internships among students sufficiently early in their educational careers to permit and encourage students to apply for the model programs.

(d) Promote cooperation among businesses, school districts and community colleges in working toward the goals of the Oregon Educational Act for the 21st Century.

(e) Develop academic skills, attitudes and self-confidence necessary to allow students to succeed in the work environment, including attitudes of curiosity and perseverance and the feelings of positive self-worth that result from sustained effort.

(f) Provide a variety of experiences that reinforce the attitudes needed for success in the business world.

(4) The department shall direct fund recipients to adopt rules establishing standards for approved programs

under this section, including criteria for eligibility of organizations to receive grants, and standards to determine the amount of grants.

(5) The department may seek and receive gifts, grants, endowments and other funds from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the school-to-work transition and the work experience internship programs and may expand the same or any income therefrom according to the terms of such gifts, grants, endowments or other funds. [1993 c.765 s.46]

LITERACY, EDUCATION AND PROFESSIONAL TECHNICAL JOB TRAINING

329.900 [1993 c.765 s.9; 1995 c.660 s.45; repealed by 1997 c.652 s.63]

329.905 Economic development policy to support literacy, education and professional technical job training; goals. (1) The Legislative Assembly finds that a highly skilled, well-educated workforce is critical to the present and future competitiveness of Oregon's economy. Curricular and institutional change throughout the educational process is imperative to achieve Oregon's economic and education reform goals. To accomplish fully education reform at the elementary and secondary levels, it is essential that Oregon's citizens gain a thorough understanding of the significant value of professional technical education and the vital role it plays in preparing Oregon's citizens for entry into the workforce, further training or

entry into higher education. The Legislative Assembly, therefore, declares that it is the economic development policy of the state to support and promote literacy, education and professional technical job training for Oregon's citizens. Further, the Legislative Assembly declares that it is the goal of the state to achieve the following by the year 2000:

(a) Measurably increase the knowledge and improve the skills of Oregon workers;

(b) Promote and sponsor effective and responsive training programs for employed and unemployed Oregonians who need literacy and other job-related training;

(c) Promote and increase youth enrollment in secondary, post-secondary and apprenticeship programs that lead to family wage jobs;

(d) Secure the active participation and full cooperation of Oregon industry leaders and business owners in developing programs to increase and improve worker education and performance;

(e) Promote and increase the coordination of Oregon's education and job training systems to more fully respond to the increasingly complex training needs of workers; and

(f) Promote and increase access to education and job training programs for all Oregonians regardless of their economic status or geographic location within the state.

(2) The Legislative Assembly declares that it is the policy of this state to integrate employment, training and development programs into its economic development efforts.

(3) The Legislative Assembly further declares that the employment development and training activities provided for in ORS 329.905 to 329.975 are job creation and economic development activities within the meaning of subsection (3), section 4, Article XV of the Oregon Constitution.

(4) The Legislative Assembly further declares that the State of Oregon must dedicate the talents, resources and energies of its people to having the best trained workforce in the United States by the year 2000 and a workforce equal to any in the world by 2010. When this workforce exists, Oregon will have a highly skilled workforce that is:

(a) Engaged by competitive, diversified industries;

(b) Supported by education and training;

(c) Supported by employment systems that are responsive to the needs of people and the labor market; and

(d) Reflective of the diversity of Oregon's population.

(5) The Legislative Assembly further declares that the role of business and industry is critical to the implementation of education reform and that the goals of ORS 329.905 to 329.975 are:

(a) Coordinated and complementary education, training and employment programs.

(b) A high performance workforce characterized by diversity, technical competence and economic self-sufficiency.

(c) Educational performance standards that match the highest in the world.

(d) Assurance of educational attention necessary for attainment of high academic standards for all students.

(e) An education and employment training system that has the capacity to meet the training needs of individuals and employers.

(f) Assurance of workforce preparedness for all students through covenants between business and education. [Formerly 285.200]

Note: 329.905 to 329.975 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 329 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

329.910 [1993 c.765 s.21; repealed by 1997 c.652 s.63]

329.915 Objectives of ORS 329.905 to 329.975. The Legislative Assembly intends that the specific objectives of ORS 329.905 to 329.975 include:

(1) Restructuring elementary and secondary schools in this state to teach a higher level of knowledge leading to more effective job skills to all students and to have students attain this knowledge earlier.

(2) Developing comprehensive, professional technical education programs for students that lead to industry certification and:

(a) Emphasize work-based learning experiences, including apprenticeships and youth apprenticeship programs;

(b) Involve business and labor in the development and delivery of such programs;

(c) Recognize and implement standards approved by industry and establish new industry approved standards, equal to the highest international standards for achievement;

(d) Provide an articulated education program carrying all students to their maximum potential and including appropriate support services for students and their families;

(e) Deliver the support those students most at risk need to succeed; and

(f) Produce the high level technical, personal and leadership skills needed by competitive businesses and industries.

(3) Helping businesses and industries transform their operations to high performance work organizations where:

(a) Frontline workers have higher skills, work in teams and are given greater responsibility for the development and production of a product or service, and receive necessary training for these purposes; and

(b) Public and private investment support improved management practices, competitive production processes and worker training.

(4) Encouraging managers and workers to play key roles in preparing and implementing state education and training policy, programs and standards, including support of employee involvement in schools. [Formerly 285.203]

Note: See note under 329.905.

329.920 Duties of Education and Workforce Policy Advisor and regional committees. (1) The Education and Workforce Policy Advisor and the regional workforce committees, with the advice and participation of partner agencies, are responsible for furthering the policies, goals and objectives of this state as described in ORS 329.905 and 329.915.

(2) The advisor and the committees shall help ensure achievement of this state's goals and objectives by effective and efficient coordination and oversight of all the employment-related training, education and job placement programs of this state.

(3) As used in this section, "partner agencies" means those agencies that are recipients of workforce development funds under ORS 329.905 to 329.920, 329.930 to 329.975 and 657.337. [1993 c.765 s.5; 1997 c.652 s.25]

Note: See note under 329.905.

329.925 Workplace training for key industries. (1) The Legislative Assembly finds that efficiency and higher productivity in all sectors of the economy are important to the maintenance of the state's economic health. The Legislative Assembly further finds that a trained, productive and flexible workforce is critical to competitiveness, efficiency and higher productivity. Therefore, the Legislative Assembly declares that it is the policy of the State of Oregon to promote the development and improvement of the work skills and basic literacy skills of employees working in all sectors of the state's economy.

(2) To implement the policy stated in subsection (1) of this section, the Key Industry Employe Training Program

shall be established within the Economic Development Department. Through the program, the department shall:

(a) Provide matching grants through community colleges in partnership with employers for the purpose of providing employees with literacy or customized skills training.

(b) Restrict grant awards to training program proposals submitted by two or more firms in a single business, professional or industry sector, with preference given to programs developed in cooperation with business, professional or industry association.

(c) Require that training programs provide long-term comprehensive skills development.

(d) Award grants only to those proposals that lead to, sustain or create family wage jobs. [Formerly 285.205]

Note: See note under 329.905.

329.930 Business, industry and education partnerships; Industrial Extension Service; duty of Office of Community College Services. (1) Pursuant to rules adopted by the Economic Development Department, a program is established to organize business, industry and education partnerships to develop the most competent workforce in America by the year 2000, specifically:

(a) To provide targeted training grants for customized training programs for new or expanding firms;

(b) To provide industry training grants to community colleges or others for training programs addressing the common needs of two or more businesses within an industry, with special emphasis on Key Industries as

designated by "Oregon Shines" and the Legislative Assembly; and

(c) To provide capacity building grants to trade associations and business and labor organizations to build capacity for addressing long-term workforce and workplace training and education needs.

(2) Pursuant to rules adopted by the Economic Development Department, an Industrial Extension Service is established, using public and private expertise, to assist Oregon firms in traded sectors in adopting the appropriate technology, management techniques, work organization and workforce development strategies to remain competitive in a global economy.

(3) The Office of Community College Services shall support the Oregon Advanced Technology Center, for the purpose of enhancing Oregon's economic competitiveness by assisting Oregon manufacturers with the adoption and implementation of modern manufacturing technologies and processes. [1993 c.765 s.18]

Note: See note under 329.905.

329.935 [Formerly 285.207; repealed by 1995 c.660 s.50]

329.940 [1993 c.765 s.10; repealed by 1997 c.652 s.63]

329.945 Grants to community colleges and school districts; purpose. (1) Pursuant to rules adopted by the State Board of Education, the Office of Community College Services and the Division of Professional Technical Education may jointly make grants to community college districts and school districts for the purposes of:

(a) Supporting proposals from school districts and others to provide alternative learning centers or teaching methods to students of high school age who are at risk of not achieving a Certificate of Initial Mastery or Certificate of Advanced Mastery;

(b) Providing incentives to create skill training centers to insure high academic standards and workforce excellence; and

(c) Continuing and enhancing the programs and services provided by existing skill training centers.

(2) Skill training centers shall provide:

(a) Intensive instruction and support for youth to achieve high academic standards;

(b) Training and support services to prepare unemployed, underemployed and dislocated workers and homemakers for participation in a competitive society;

(c) Upgrading of the skills of retired workers and older adults and placement in businesses experiencing labor shortages; and

(d) Coordination and consolidation of existing community programs and services to better serve clients through well managed and jointly operated programs.

(3) Skill training centers shall provide intensive instruction and support for youth and adults in order to prepare them for participation in a competitive workforce. Centers must respond to clear and significant community workforce needs that are not adequately addressed through existing programs and provide support services that enable at-risk youth and adults to succeed. Grants

for skill training centers made under this section must be matched in substantial part with other funds available to the local community college district and the public schools. The offices shall seek additional support from Job Training Partnership Act organizations, Family Support Act organizations and other workforce training providers. Grants must be distributed on a reasonable geographic basis. [Formerly 285.213]

Note: See note under 329.905.

329.950 Statewide literacy "hotline"; duties of Office of Community College Services. (1) Pursuant to rules adopted by the State Board of Education, the Office of Community College Services shall provide for a statewide literacy "hotline" for literacy program referrals and for the statewide coordination of literacy programs pursuant to ORS 344.760 and 344.765.

(2) Gifts and grants for the support of the literacy hotline shall be deposited with and administered by a nonprofit organization selected by the Commissioner of the Office of Community College Services. The nonprofit organization that is selected must show a history of similar experience with fiduciary responsibilities.

(3) The Office of Community College Services may contract with any public body or nonprofit organization to accomplish the purposes of this section. [Formerly 285.225]

Note: See note under 329.905.

329.955 Occupational Program Planning System. (1) The Occupational Program Planning System is established as

the state's official occupational information system. The system shall provide the following information: -

(a) Projections of employment by occupation and by openings.

(b) Estimates of the number of unemployed by occupation.

(c) Estimates of supply of workers by occupation from education, employment and job training programs.

(d) Statistical and narrative occupational demand and supply analyses.

(e) Occupational employment patterns by industry.

(f) Occupational characteristics information.

(2) In cooperation with education, employment and job training providers and the Employment Department, the system shall provide a systematic follow-up of program providers using the Employment Department's unemployment insurance wage file. Follow-up information shall be provided annually to program providers and their related state agencies.

(3) Professional technical education and other job and employment training providers shall provide to their related state agencies such information as is necessary to provide a follow-up of former participants in their programs. Information provided shall not be published so as to identify an individual.

(4) The Occupational Program Planning System shall be housed in the Research and Statistics Section of the Employment Department. Policy direction for the system

shall be provided by the Oregon Occupational Information Coordinating Committee, a committee of the Education and Workforce Policy Advisor, which shall forward required reports to appropriate state and local agencies.

(5) A report on the results of follow-up studies shall be submitted biennially to the Education Committees of the Legislative Assembly and to other appropriate legislative committees.

(6) The Occupational Program Planning System shall cooperate with the Interagency Shared Information System established under ORS 329.965. [Formerly 285.230; 1997 c.652 s.26]

Note: See note under 329.905.

329.960 Regional workforce investment technical assistance. (1) The Education and Workforce Policy Advisor shall provide regional workforce investment technical assistance. The technical assistance staff shall be accountable for developing and maintaining necessary communication and advocacy links between the Education and Workforce Policy Advisor and regional workforce committees.

(2) The Economic Development Department shall establish additional baseline information on employer practices related to investment in employee training and education, high performance, modernization and additional workplace practices and benchmarks as identified by the advisor and the Oregon Progress Board.

(3) The Legislative Assembly believes that creating high skill, high wage opportunities requires the assistance of partnerships among business, labor, government and

education and means that thousands of regional and local leaders must know how to be change agents in their communities, schools, workplaces and interest groups. [1993 c.765 s.19; 1997 c.652 s.27]

Note: See note under 329.905.

329.965 Interagency Shared Information System. (1) There is established the Interagency Shared Information System. The purpose of the system is to collect and share information for the development of statistical and demographic data to facilitate the creation of strategies to improve the education, training and quality of Oregon's workforce. The system shall share aggregate information with a state agency to allow the agency to develop policy, evaluate policy and plan and measure performance.

(2) The Employment Department shall administer the Interagency Shared Information System. The Education and Workforce Policy Advisor shall oversee the development, implementation and monitoring of the system.

(3) Every agency or program that receives funding under sections 125 and 129, chapter 765, Oregon Laws 1993, and the Department of Corrections and the Department of Consumer and Business Services shall provide information to the Interagency Shared Information System. Information shall be provided by the agency or program in a format that encodes identifying data, including the client's social security number, using a formula unique to the agency or program that shall not be disclosed to the system. The information in the system is a public record. However, the system is not the custodian of the information for purposes of ORS 192.410 to 192.505. If a state agency described in this subsection

prepares or acquires a record that is confidential under federal or state law, including ORS 192.502(2), the state agency does not violate confidentiality laws by providing the information described in this section. Notwithstanding the provisions of ORS 279.355(3), 279.359(3), 285A.446 and 657.665, the Bureau of Labor and Industries, the Job Training Partnership Act section of the Office of Community College Services and the Employment Department are authorized to provide information to the Interagency Shared Information System.

(4) A state agency shall not allow public access to information received from the system that identifies a particular individual unless required by law. Any officer or employee of any of the participating agencies who, without proper authority, shall disclose confidential information under this section thereafter may be disqualified from holding any appointment or employment with the State of Oregon. The Employment Department shall adopt by rule procedures to prevent disclosure of confidential information submitted to the system. [1993 c.765 s.19a; 1997 c.61 s.8; 1997 c.652 s.28]

Note: See note under 329.905.

329.970 [Formerly 285.243; repealed by 1997 c.652 s.63]

329.975 Matching grants; application. (1) When expended for grants to programs described in ORS 329.950 and 329.960(2), grant moneys shall be matched in the manner described in subsections (2) and (3) of this section.

(2) In any biennium, each state agency administering a grant program described in ORS 329.950 and 329.960(2),

shall be required to secure matching funds, on a dollar-for-dollar basis, for not less than 75 percent of the total amount reserved by law for the program for that biennium.

(3) An applicant for a grant from a program described in ORS 329.950 and 329.960(2), shall be required to match, on a dollar-for-dollar basis, the amount of the grant. However, the agency administering the program may exempt the applicant from the 100 percent matching requirement when the agency determines that the grant applicant is undergoing economic hardship and that the purposes of ORS 329.905 to 329.975 will be more readily accomplished by a lower matching requirement. In any biennium, the total amount of exemptions provided to grant applicants under this subsection shall not exceed 25 percent of the amount reserved by law for a program for that biennium.

(4) In determining whether a grant applicant is undergoing economic hardship for the purposes of this section, a state agency shall consider:

(a) An applicant's ability to match the grant amount based on both the assessed value per student, if applicable, and the actual expenditure per student;

(b) The proportion or other measure of economically disadvantaged persons residing within the district or area of the applicant; and

(c) The level of unemployment in the district or area of the applicant.

(5) A state agency shall credit an applicant's matching funds in an amount that does not exceed 100 percent of

the amount of the grant given to the applicant. Moneys of an applicant that are available to operate programs described in ORS 329.950 and 329.960(2), and that exceed 100 percent of the grant sought or given to the applicant shall not be available for use as matching funds by any other applicant. [Formerly 285.247; 1997 c.652 s.29]

Note: See note under 329.905.

329.990 [Amended by 1963 c.22 s.1; renumbered as part of 330.990]

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